BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments to Rule 25-17.0832, FAC, Firm Capacity And Energy Contracts.	Docket No. 060555-EI Filed: November 3, 2006

DIRECT TESTIMONY

OF

MARC C. BRUNER, Ph.D.

FOR

THE SOLID WASTE AUTHORITY

OF

PALM BEACH COUNTY , FLORIDA

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

A. My name is Marc C. Bruner. I'm the Director of Planning and Environmental Programs for the Solid Waste Authority of Palm Beach County, with offices at 7501 North Jog Road, West Palm Beach, Florida 33412.

Q. State briefly your educational background and experience.

A. I have BA and MS degrees in Botany from the University of Wisconsin – Milwaukee, and a Ph.D. in Ecology from the University of Tennessee – Knoxville. I have been practicing as an environmental manager for over twenty-five years in both government and the private sector. I have been the Director of Planning and Environmental Programs for the Authority for over twenty years. In that role I have been responsible for the long range planning for the Authority, including the waste-to-energy facility.

Q. On whose behalf are you presenting this testimony?

A. I am presenting this testimony and appearing on behalf of the Solid Waste Authority of Palm Beach County, Florida (the "Authority") in my capacity as Director of Planning and Environmental Programs.

Q. What is the Authority's interest in this proceeding?

A. The Authority has been a producer of renewable energy since its municipal solid waste-to-energy facility began operating in 1989. In addition to our existing facility, there is the possibility that we may expand our generating capacity, or that we would construct one or more additional renewable energy facilities. We also produce biomass fuel that is burned in a private sector biomass-to-energy facility, and we have initiated a project to utilize landfill gas as a replacement for natural gas to treat and process wastewater treatment sludge. As such, we are among the types or renewable energy producers that the Florida Legislature had in mind when enacting Section 366.91, Florida Statutes. However, we have concerns as both a producer of renewable energy and a sizeable consumer of electricity, that the intent of the legislation – to diversify Florida's fuel mix and reduce reliance on natural gas, among other things – is properly implemented by the Commission

Q. Please provide a brief general description of the Authority's waste-to-energy facility.

A. The Authority disposes of over 2 million tons of municipal solid waste annually. Approximately 880 thousand tons of this total is delivered to the waste-to- energy

facility for processing with the remainder being diverted to recycling, biomass fuel or landfill disposal. Once at the waste-to-energy facility, the solid waste undergoes processing to separate recyclable materials, primarily ferrous metal and aluminum, from the non- recyclable materials. The non-recyclable materials are further processed into a material known as refuse derived fuel (RDF). (This is in contrast to "mass burn" facilities, which combust the waste stream first and separate afterward.) RDF is fired in steam boilers to produce steam for use in a 62mW steam turbine-generator. The facility generates approximately 400 thousand mWh of electricity annually, the majority of which is sold to Florida Power and Light (FPL), pursuant to a contract for firm energy and capacity which was executed in January 1987 and expires in March 2010.

Q. Is the Authority's contract with FPL a standard offer contract?

A. No. The contract is a result of negotiations between the Authority and FPL.

Q. Was there a standard offer available at the time the Authority negotiated its contract with FPL?

A. Yes, there was a standard offer available at the time but both the Authority and FPL were willing to negotiate a contract that would address each of their perceived needs and/or shortcomings of the standard offer.

Q. So are you saying that the current rules resulted in a reasonable standard offer from which you negotiated with FPL?

A. No. The rules then and now are not the same. The Commission's rules and the resulting standard offers that were in effect when we negotiated our contract in the mid 1980s were very much different than they are today. The same value-of-deferral pricing formula was used and some of the same biases against non-utility generators were present, but certain aspects of the rules and standard offer were significantly different. For example, avoided costs were calculated using a statewide avoided base-load coal plant with an in-service date that was reasonably close to the in-service date of our waste-to-energy facility. That gave us the opportunity to negotiate a contract that allowed us to reasonably predict our revenues over time, because a large part of our payments were in the capacity payment, as opposed to the energy payments which can vary with energy markets. Although that standard offer had many shortcomings – including the value of deferral pricing mechanism – compared to standard offers that result from either the current rules, or those that would result from Staff's proposed rules, the prior rules and standard offers in place when we negotiated our contract were less weighted against renewable energy facilities.

Besides a deterioration of the standard offers due to specific changes in the rules over time as well as the Commission's interpretation of those rules, the utilities have continued to add increasingly onerous provisions to the standard offer contracts that were routinely approved. Such provisions included dispatch rights, unreasonable performance requirements, broad tax liability, and other such provisos. All these changes have culminated in the fact that the most current rules

and most recent standard offers provide very little opportunity or incentive to renewable energy producers.

To serve the purpose for which they were intended, standard offers must be balanced fairly and equitably among the interests of the renewable energy facility, the utility and the consumers who will benefit by the State's policy to encourage renewable energy facilities. Ingrained and sometimes incorrect assumptions concerning risk and lack of reliability must not inappropriately influence this balance in the process of creating standard offers that advance the goal of promoting renewable energy in Florida.

Q. What did you mean by your reference to bias against renewable energy producers in the standard offers?

A. At the time the Authority negotiated its current contract with FPL, the standard offer that was in effect at the time at least represented a reasonable option with respect to terms, conditions and – to some extent - pricing. We weren't especially pleased with value of deferral pricing, but from our perspective as a significant consumer of energy, we understood the Commission's desire to proceed cautiously until it had gained some experience with this "new" class of electricity producers. In 1987 the Authority could have accepted the standard offer, even though it was obvious that a negotiated contract would have been more beneficial to both the Authority and FPL. There were some aspects of the standard offer contract that we wanted to modify and some that FPL wanted modified, pointing to a negotiated contract as a way to proceed, if both sides would act in a

reasonable fashion. We negotiated a contract that deviated from the standard offer contract in ways that benefited the Authority while enhancing the value of our firm capacity and energy sale to FPL. The very crucial point here is that the standard offer was more even-handed in those days, and neither side was completely satisfied with it.

Unfortunately, for the reasons I mentioned, this situation changed over the years to where the current rules, Commission implementation of those rules, and the most recent standard offers are in fact heavily biased in favor of the utility. This situation provides virtually no incentive for the utility to negotiate – except to improve their position at the expense of the renewable energy producer.

During the negotiation process with FPL, we encountered difficulties on several occasions. But the existence of a fair and reasonable standard offer contract - which in a sense established the Commission's presence in the negotiation process as a mediator – provided sufficient incentive to overcome the sticking points. It is critical that the Commission's rules result in a standard offer contract that is fair, equitable and reasonable in its pricing, terms and conditions and is uniform across the state if it is to promote renewable energy as mandated by the Florida Legislature.

Q. Please elaborate.

A. When any retail consumer buys electricity at retail from a regulated utility, the utility is the only seller – this is an example of a monopoly. Selling electricity to a utility is very similar to buying electricity from a utility. As retail electric

consumers, in Florida we are all restricted to purchasing electricity from our designated "monopoly" electric utility supplier. As a producer of electricity, we are also limited to selling only to the utility purchaser – this is an example of a "monopsony". Either way – exercising its monopoly or monopsony power – as our only seller or buyer the utility has a great advantage in the market. It can set prices too low when buying and too high when selling because the other party to the transaction has no alternative. In the same way that "standard" retail electric tariff rates approved by this Commission are necessary to prevent monopoly utilities from overcharging for electricity sold, standard offer contracts are necessary to prevent monopsony utilities from underpaying for electricity purchased. A fair and reasonable standard offer that is not biased against the renewable energy producer can serve as a "safety net" for the renewable energy producer and will therefore counteract attempts by the utility on exercise of its monopsony power by the utility just as the retail electric tariffs act as constraints on its monopoly power. We need both.

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

A. Although it may appear that we can sell to "other" utilities, that is really more perception than reality. You must remember that selling to another utility will automatically result in increase costs (decreased revenues) – both direct out-of-pocket costs and indirect administrative costs. For example, selling to a utility other than our "native" supplier would require that the Authority incur additional costs associated with transmission services, the assessment of line loss charges as

opposed to line loss credits, and the administrative and personnel costs of scheduling electricity deliveries, among other things. Moreover, because all investor-owned utilities are subject to the same Commission rules that prescribe a uniformly under-valued price for capacity and onerous terms and conditions, we are really left with no economically viable option other than sales to our local utility.

I have an additional concern that the utilities and your Staff appear to be in complete agreement on the proposed rules. To me, that is a strong indication that the standard offer will not serve to encourage negotiation because the utility industry is perfectly happy with its terms and conditions. They will therefore have no incentive to deviate from terms and conditions favorable to themselves.

Q. What is the Authority's position with regard to the Commission's proposed rule?

A. Our position is that the Commission's proposed rule essentially maintains the status quo, with the changes being little more than changes in form rather than substance. For details on these points, I would refer you to the testimony and exhibits of our expert witness Mr. Frank Seidman. However, as a general proposition, it is the Authority's position that the proposed amendments will not result in standard offer contracts that are reasonable in their pricing, terms and conditions and as such, will not promote renewable energy and will not meet the policy goals articulated by the Florida Legislature in Section 366.91, F.S to diversify fuel mix, reduce reliance on natural gas for the production of electricity

and reduce volatility in energy prices. As a larger electricity consumer we are concerned that Florida's growing reliance on natural gas to produce electricity has resulted in unreasonably high electric rates and has unfairly imposed the entire risk of natural gas price increases or supply interruptions squarely on the consumer's shoulders. Rules that strongly encourage renewable energy will reduce those risks now and into the future.

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

A. I'm not an expert on this but I would suspect there are some risks associated with renewable energy. However, speaking from experience, I would have to say that such risks, if any, are minor. As I mentioned, the Authority has been producing electricity at its waste-to-energy facility since the late 1980's. Similarly, other local governments – The City of Tampa, Hillsborough County, Pinellas County, Pasco County, Broward County, Miami-Dade County to name a few – have been doing likewise. To my knowledge, none of these local governments have failed to live up to their contractual requirements, none of them have ceased operations, and none of them have done anything but provide value to the State by adding much needed diversity of fuel supply.

As Mr. Seidman will testify, the current standard offer rules were adopted at a time when the renewable energy or "non-utility generating" industry was in its infancy with little or no history of performance or reliability. As a result, the Commission adopted rules and a philosophy designed to address its concerns at that time about the long-term reliability and viability of the fledgling industry. As

it turns out the industry – especially the waste-to-energy industry – has proven itself to be very reliable. As Mr. Seidman will advise the Commission, it is time to acknowledge the reliability of our facilities by changing substantially your rules and philosophy to reflect the realities of renewable energy producers as reliable, long-term contributors to Florida's energy mix.

Rather than recognizing the reliability of the industry and its many benefits to the State and embracing this proceeding as an opportunity to fix the problem, it seems that the proposed amendments will only maintain the status quo – despite what appears to be a mandate from the Legislature to the contrary. Meaningful change can only begin to occur after the inherent bias against renewable energy producers and other non-utility generators is eliminated from the rules.

We are also concerned that the Commission would propose an amendment that appears to run contrary to the intent of the applicable law, and requires the Authority and other local governments to expend their time and financial resources in opposing the amendments.

This is in contrast to the Commission just having authorized FPL to construct approximately 2500 megawatts of additional natural gas fired generation at its "West County" facility and soon thereafter filing a notice with the Commission that it was withdrawing its standard offer contract for renewable energy producers.

Q Would you please elaborate on your comment regarding FPL's withdrawal of its standard offer contract for renewable energy producers?

A. Certainly, with the significant caveat that I am no expert in this field, but do attempt to keep abreast of situations that affect the Authority as a consumer and producer of electricity. FPL's West County facility is located in Palm Beach County directly west of our waste-to-energy facility. I understood from newspaper accounts and from several of the documents issued in proceedings before this Commission – including the order granting petition for determination of need (Order No. PSC-06-0555-FOF-EI in Docket No. 060225-EI Issued on June 28, 2006) -- that FPL's petition for determination of need was contingent on, among other things, FPL's presumably ongoing commitment to actively encourage renewable energy producers. More specifically, the order states:

> *"As ordered by the Commission on May 16, 2006 in Docket No. 050806-EQ, FPL is preparing an additional standard offer contract for the consideration of renewable providers based on FPL's proposed 2012 advanced technology coal plant. FPL is also actively encouraging development of renewable energy, consistent with the direction of the Florida legislature and the Commission, by (i) negotiating and being continuously available for negotiation of custom purchased power contracts with renewable energy providers; and (ii) having continuously available a standard offer contract for renewable generation, including the contract approved by the Commission on May 16, 2006 for use beginning June 1, 2006, which implements input received from renewable providers that participated in the*

Commission's renewable energy workshops; and (iii) filing with the Commission, no later than August 21, 2006, additional standard offer contracts for consideration of renewable energy providers as directed by the Commission in Docket No. 050806-EQ."

However, it is of great concern to me - and perhaps should also be to this Commission as well as all of FPL's customers - that by notice to the Commission on September 21, 2006, FPL withdrew the standard offer contract that it had agreed to make continuously available and that it had filed less than 60 days earlier, indicating that it had complied with the Commission's condition to granting the petition for need determination by simply filing and then withdrawing the standard offer.

To have granted FPL's request for determination of need, and then allow FPL to disregard what I see as the very clear intent of the Legislature and the Commission's order is beyond my understanding. FPL's actions are indicative of an apparent disregard for the efforts of the Legislature and this Commission to encourage renewable energy and diversify the State's fuel mix, which will now be further reliant on natural gas for the production of electricity on the order of an additional 2500 megawatts. Failure of this Commission and the utilities to promote and incorporate substantial quantities of electric generation from renewable energy producers to displace natural gas-fired generation – as directed by the Florida Legislature -- will continue to increasingly burden the State's

electric consumers and economy with greater and greater price and volatility risks – risks from which the utilities are completely isolated, protected and seemingly indifferent.

Q. Would you please elaborate on the price and volatility risks you mentions?

A. Yes. While the Commission appears to be highly concerned with theoretically potential but as yet unrealized and unquantified risks that may result from renewable energy producers, it seems to overlook much greater actual risks that are at this time borne and subsidized by the electric consumers of the State. Preoccupation with the presumed but not identified risks of renewable energy begs several questions -- what about the risk associated with the thousands upon thousands of megawatts of natural gas fired generators that were approved by this Commission and built by the utilities based on natural gas fuel price projections that – as it turns out – were dramatically underestimated? A case in point is the recently approved West County plant being built by FPL. What if FPL's fuel price projections are wrong – as they most certainly will be -- over the life of the plant? Will FPL "protect" its ratepayers from excess costs the way the current and proposed rules protect the ratepayers from renewable energy facilities? Of course it won't because all fuel costs are a direct pass-through to the customers. Where is that risk mentioned or accounted for? Are those fuel risks less than the risks of renewable energy? While it is true that a rate reduction has recently been proposed by FPL, it doesn't substantially reduce the burden of high natural gas costs on consumers of electricity. My question is: why must renewable energy

facilities be totally risk free to the consumer when the consumer bears the entire risk of utility generation? The Commission seems to operate on the assumption that if the utility generates power, there is no unacceptable risk, but if it's a non-utility every conceivable risk must be identified and protected against. I believe that is one reason why the Legislature saw fit to intervene.

Q. What other concerns does the Authority have?

A. **First**, the QF rules, which Staff proposes to amend in minor ways, were originally adopted in 1983. They were amended on several instances as mentioned previously and have been increasingly biased in favor of the utility and against the renewable energy producers. In addition, they have maintained as their centerpiece, the same value of deferral pricing philosophy that was adopted in the early 1980s, which I believe does not reflect the demonstrated history of reliability of waste to energy facilities and the state of the art in renewable energy generation. It is time for the Commission and its Staff to take a fresh look, make a new start, and think outside of the box. I am told that the way the Commission regulates utilities today is very different than the way it regulated them in 1983 – that the basic philosophy has changed. If that is so, why not take a different approach with renewable energy? Some of the parties in this room today – myself included - want to sell renewable energy and/or build renewable energy facilities. By our testimony and that of our expert witnesses, we are telling the Commission what our industry needs. By and large, this reiterates our post workshop

comments submitted on several prior occasions, which were essentially dismissed.

Second, it is our view, and that of our legal counsel, that the proposed rule amendments would fail to fulfill the provisions of Section 366.91, F.S. in that they would do virtually nothing to change the status quo. As our consultants Mr. Seidman and Mr. Bedley will testify, the Commission's rule proposal will not advance any of the policy objectives set forth by the Legislature because they will not result in reasonable prices and will make financing of any new renewable energy projects difficult, if not impossible. The proposed rule presented by Mr. Seidman is designed to comply with the legislative intent based on the needs of the industry.

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

A. As I mentioned, our consultant Mr. Frank Seidman will address the details of a proposed rule supported by the Solid Waste Authority. However, as a general comment, the Solid Waste Authority would suggest that the Commission explore and include in its rules ways to encourage the development of renewable energy resources with a realistic, 21st century perspective on the costs, benefits and risks of developing renewable energy resources, rather than taking steps that merely maintain the status quo and further discourage the industry.

Q. Does this conclude your direct testimony?

A. Yes it does.