BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for modification to determination of need for expansion of an existing renewable energy electrical power plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power & Light Company, and for approval of associated regulatory accounting and purchased power agreement cost recovery.	DOCKET NO. 110018-EU ORDER NO. PSC-11-0293-FOF-EU ISSUED: July 6, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

FINAL ORDER

BY THE COMMISSION:

BACKGROUND

The Solid Waste Authority ("SWA") is a dependent special district created by the Florida Legislature by the Palm Beach County Solid Waste Act, Chapter 2001-331, Laws of Florida ("Special Act"), as a political subdivision of Palm Beach County, Florida. The Special Act authorizes the SWA to construct and operate resource recovery waste-to-energy ("WTE") facilities to generate electrical power to supplement the electricity supply of the state through the combustion of municipal solid waste ("MSW") from the geographical area of Palm Beach County, Florida, and to sell the resulting output to any governmental agency, individual, public or private corporation, municipality or other person. The SWA has engaged in such activities at its Palm Beach County site since 1989. The SWA's existing facility ("Existing Facility") consists of a nominal 63 megawatt ("MW") WTE facility. The Commission determined a need for the Existing Facility at a maximum 75 MW pursuant to Section 403.519, Florida Statutes (F.S.), in 1985.[1]

On January 7, 2011, pursuant to Sections 403.519 and 377.709, F.S., the SWA and Florida Power & Light Company ("FPL" or "Company") (collectively, "Joint Petitioners") petitioned the Florida Public Service Commission ("Commission") for a determination of need to

[1] See Order No. 15280 (Fla P.S.C., 1985), Docket No. 85-0435-EU – In re: Petition of Palm Beach County Solid Waste Authority for Determination of Need of Solid-Waste-Fired Small Power Producing Electric Power Plant, issued October 21, 1985.

expand the Existing Facility to a total of 168 MW ("Expanded Facility"), when added to existing electrical generating capacity. The Joint Petitioners further request that we approve a purchased power agreement ("PPA" or "Contract") for firm capacity and energy between FPL and the SWA, and associated regulatory accounting and cost recovery treatment for FPL, pursuant to Section 377.709, F.S. The PPA provides that an advanced funding payment will be made during construction for the electrical component of the Expanded Facility. FPL requests recovery of the advanced funding payment through the Energy Conservation Cost Recovery ("ECCR") clause. FPL requests recovery of its energy payments to SWA under the Contract through the Fuel and Purchased Power Cost Recovery clause, consistent with the recovery of such payments for FPL's existing PPAs.

The initial Petition and testimony provided by the Joint Petitioners did not include the PPA or any supporting analyses regarding testimony that the Contract for the Expanded Facility was cost-effective. In order to finalize the PPA, develop the analyses to support the prefiled testimony, respond to discovery, and provide our staff the time needed to evaluate the information, the Joint Petitioners waived the statutory clock for us to hold a hearing.[2]

On February 9, 2011, Mr. Daniel R. Larson and Mrs. Alexandria Larson (collectively, "Larsons") filed a petition to intervene. On February 21, 2011, Mr. Frank Woods and Ms. Kelly Sullivan (collectively, "Woods/Sullivan") filed a petition to intervene. Larsons and Woods/Sullivan were granted intervention on March 3, 2011.[3] On April 18, 2011, Woods/ Sullivan filed a notice of withdrawal from the Docket.

An Evidentiary Hearing was held on April 25, 2011. No public testimony was offered at the Hearing.

We have jurisdiction over the subject matter of this proceeding pursuant to Sections 403.519, 377.709, 366.91, and 366.92, F.S.

ISSUES PRESENTED

A. The Applicant

We have been asked to determine whether SWA *and* FPL are the proper applicants in this proceeding pursuant to Section 403.519, F.S. SWA and FPL are Joint Petitioners in this proceeding; however, SWA has identified itself as the sole applicant for the need determination. When distilled, the question before us is whether SWA alone is a proper applicant pursuant to Section 403.519, F.S., or whether both SWA and FPL are required to be the applicants.

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[2] See March 23, 2011, letter from the Joint Petitioners (Document No. 1936).

[3] See Order No. PSC-11-0147-PCO-EU and Order No. PSC-11-0148-PCO-EU, issued March 3, 2011, in Docket No. 110018-EU – In re: Joint Petition for Modification to Determination of Need for Expansion of an Existing Renewable Energy Electrical Power Plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power and Light Company, and for Approval of Associated Regulatory Accounting and Purchased Power Agreement Cost Recovery.

Joint Petitioners

The Joint Petitioners assert the following.

- The Palm Beach County Solid Waste Act[4] authorizes SWA to construct and operate resource recovery WTE facilities to generate electrical power through combustion of MSW, and to sell the resulting output to any governmental agency, individual, public or private corporation, municipality, or other person.
- SWA has been continuously engaged in such activities at its site in Palm Beach County, Florida, since 1989.
- SWA is specifically authorized to engage in such activities to meet the requirements of Section 403, F.S., which governs the instant need determination.[5]
- SWA was the applicant with the Florida Department of Environmental Protection ("FDEP") for site certification for its Existing Facility and is presently the applicant for modification of that certification with FDEP in order to build the Expanded Facility.[6]
- As the proper and lawful applicant for site certification, SWA is the proper applicant for this Commission's determination of need under Section 403.519, F S.
- SWA has previously been found to be the proper applicant in a Commission determination of need proceeding pursuant to Section 403.519, F. S.; this was the need determination for the Existing Facility that SWA now seeks to modify.[7]
- For purposes of Section 403.519, F.S., "applicant" means "any electric utility which applies for certification pursuant to the provisions of this act" and "electric utility" means "cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy."
- As a dependent special district and political subdivision of Palm Beach County created by Chapter 2001-331, Laws of Florida, and authorized to produce and sell electrical power, SWA is an applicant for purposes of Section 403.519, F. S.

Larsons

The Larsons assert that FPL must be included as an applicant for the determination of need consistent with the holding in *Tampa Electric Co. v Garcia,*767 So2d 428 (Fla. 2000).

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[4] Chapter 2001-331, Laws of Florida.
[5] *Id.*
[6] See DEP OGC Case No. 1026, DOAH Case. No. 10-5935-EPP - In Re: Solid Waste Authority of Palm Beach County Florida, Palm Beach Renewable Energy Facility #2, officially recognized by the Commission in Order No. PSC-11-0198-PHO-EU, p. 16.
[7] See Order No. 15280 (Fla P.S.C., 1985), Docket No. 85-0435-EU – In re: Petition of Palm Beach County Solid Waste Authority for Determination of Need of Solid-Waste-Fired Small Power Producing Electric Power Plant.

Decision

The Joint Petitioners are persuasive in their argument that, pursuant to Chapter 2001-331, Laws of Florida, SWA is a dependent special district and political subdivision of Palm Beach County, is authorized to produce and sell electrical power, and is authorized to engage in activities to meet the requirements of Chapter 403, F.S.[8] We have previously recognized SWA as the applicant for a determination of need for its Existing Facility[9] and SWA is currently the applicant with FDEP for modification of its Existing Facility, pursuant to the Siting Act.[10]

Tampa Electric, relied upon by the Larsons, can be distinguished from the instant case based upon the facts presented. In *Tampa Electric*, the Florida Supreme Court described the precise question before it as follows:

> Does section 403.519, Florida Statutes, authorize the granting of a determination of need upon an application for a proposed power plant for which the owner and operator is not a Florida retail utility regulated by the PSC and for which only thirty megawatts of the plant's 514-megawatt capacity have been committed by contract to be sold to a Florida retail utility regulated by the PSC?

Id. at 433.

In that scenario, the Florida Supreme Court found that,

> the statutory scheme embodied in the Siting Act . . . was not intended to authorize the determination of need for a proposed power plant output that is not fully committed to use by Florida customers who purchase electrical power at retail rates . . . . The projected need of unspecified utilities throughout peninsular Florida is not among the authorized statutory criteria for determining whether to grant a determination of need pursuant to section 403.519, Florida Statutes. Moreover, . . . the fact of Duke's joining with New Smyrna in this arrangement for a thirty-megawatt commitment does not transform the application into one that complies with the Siting Act.

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[8] See e.g., Section 6, paragraph (8), Chapter 2001-331, Laws of Florida, which provides that SWA is authorized to "Acquire, construct, reconstruct, improve, maintain, equip, furnish, and operate at its discretion such resource recovery and waste management facilities as are required to carry out the purposes and intent of this act and to meet the requirements of Chapter 403, Florida Statutes, and other applicable law."

[9] See Order No. 15280, issued October 21, 1985 in Docket No. 85-0435-EU - In Re: Petition of Palm Beach County Solid Waste Authority for Determination of Need for Solid-Waste-Fired Small Power Producing Electric Power Plant, (Fla. P.S.C., 1985).

[10] See DEP OGC Case No. 10-2026, DOAH Case. No. 10-5935-EPP - In Re: Solid Waste Authority of Palm Beach County Florida, Palm Beach Renewable Energy Facility #2, officially recognized by this Commission in Order No. PSC-11-0198-PHO-EU, p. 16.

Id. at 435-36.

By contrast, in the instant case, FPL is entitled by its Contract with SWA to all of the committed capacity from the proposed SWA unit and the statutory need criteria will be evaluated against the specific need of FPL to provide adequate electricity at reasonable cost and not, as in *Tampa Electric*, based on what the Florida Supreme Court described as "[t]he projected need of unspecified utilities throughout peninsular Florida." *Id.* at 436.

Upon review, we find that SWA is the proper applicant within the meaning of Section 403.519, F.S. However, as a Joint Petitioner, FPL has assumed the responsibility to demonstrate the electrical need for and cost-effectiveness of the proposed project.

B. Need for Electric System Reliability and Integrity

We have been asked to determine whether there is a need for the SWA Expanded Facility taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, F.S.

Joint Petitioners

The Joint Petitioners assert the following.

- The SWA Expanded Facility will positively impact FPL's system reliability and integrity through the addition of renewable energy to FPL's system improving fuel diversity as well as providing firm capacity during a period when FPL's system will have a capacity requirement.
- FPL has a need for additional capacity in 2016, and the capacity resulting from the proposed Contract between the Joint Petitioners will serve to defer a portion of that capacity requirement.
- The additional capacity provided by SWA's Expanded Facility will increase FPL's system reliability and integrity by reducing its dependence upon fossil resources.
- The Expanded Facility will contribute to FPL's electrical system reliability and integrity.

Larsons

The Larsons assert the following.

- According to FPL, "There is no measurable capacity benefit from SWA."
- FPL's summer reserve margins are entirely adequate without the SWA Contract.
- The proposed Contract unjustly burdens FPL ratepayers with additional costs for energy and capacity that is not required to meet electric system reliability and integrity standards.

Decision

FPL determines the magnitude and timing of its resource needs based on a minimum reserve margin. The reserve margin represents available generating capacity during peak demand periods. FPL has established a minimum reserve margin of 20 percent above peak demand for reliability purposes. FPL has identified a reliability need beginning in 2016. This projection is consistent with FPL's 2011 Ten Year Site Plan ("TYSP"). Commencing in 2015, SWA will provide the output of the Expanded Facility as firm capacity and energy to FPL.

The record in this case indicates that there is uncertainty associated with the in-service date of the avoided unit. FPL contends that additional capacity will be needed on its system by 2016 and will be met by the construction of a 1,200 MW natural gas fired combined cycle plant (the avoided unit). This contrasts significantly with earlier assertions that ranged from 2025 to 2018. Two significant assumptions appear to account for this change: (a) the assumption that generating capacity currently on inactive reserve will not be returned to service, and (b) the assumption that summer peak capacity would be reduced due to maintenance. However, FPL witness Hartman stated that both the return of the inactive units and the summer maintenance requirements were still under review by the company.

We find that FPL's forecast assumptions, regression models, and the projected system peak demands are suitable for use in this Docket. Based on FPL's current projections for peak demand and firm capacity, the Company projects a need for additional capacity. However, uncertainty regarding potential capacity resources on FPL's system such as inactive reserve units, maintenance during peak periods, and contract extensions, and inherent uncertainty associated with load forecast, may affect the timing of FPL's need.

The record reflects that SWA has a waste disposal requirement to satisfy by 2015 and that FPL's capacity needs occur after that date. However, the business needs of renewable generators do not always match the reliability needs of the purchasing utility. The Expanded Facility will satisfy only a portion of FPL's projected capacity requirements but, several PPAs could have a significant impact on FPL's future capacity needs.

Pursuant to Rule 25-17.001(5)(d), F.A.C., all electric utilities are required to do the following:

> Aggressively integrate nontraditional sources of power generation including cogenerators with high thermal efficiency and small power producers using renewable fuels into the various utility service areas near utility load centers to the extent cost-effective and reliable.

Upon review, we find that the Joint Petitioners are persuasive in their argument that the Expanded Facility will improve electric system reliability and integrity on FPL's system. FPL is currently projecting a need for additional capacity. The Expanded Facility, projected to provide between 70 and 80 MW of firm capacity by 2015, will satisfy a portion of FPL's projected need. Therefore, the SWA Expanded Facility will contribute to the reliability and integrity of FPL's electric system. In addition to providing additional capacity, the Expanded Facility, which will

be located in Southeast Florida, has attributes that will address two system concerns for FPL: a) enhancing fuel diversity; and b) maintaining a regional balance between load and generating capacity, particularly in Southeastern Florida.

We find that there is a need for the SWA Expanded Facility taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, F.S.

C. Need for Adequate Electricity at a Reasonable Cost

We have been asked to decide whether there is a need for the Expanded Facility, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, F.S.

Joint Petitioners

The Joint Petitioners assert the following.

- The SWA Expanded Facility will result in adequate electricity at a reasonable cost because the proposed purchased power Contract is cost-effective for FPL's customers and because FPL's payments under the Contract are lower than FPL's full avoided cost resulting in cost savings to FPL's customers compared to the avoided unit.
- The Expanded Facility and the associated proposed Contract between SWA and FPL will positively enhance FPL's ability to provide adequate electricity at a reasonable cost for its customers.
- Because FPL's total cost under the proposed Contract (in terms of cumulative present value revenue requirements) is less than FPL's system cost without the Contract, the proposed Contract to purchase power from the Expanded Facility is cost-effective.
- FPL customers will save money if the proposed Expanded Facility operates at a committed capacity in the range of 45 MW–90 MW and capacity factors of 70 percent or 85 percent.
- The cost savings that will be experienced by FPL's customers are a result of fuel and environmental cost savings under the proposed Contract.
- Customers' cost savings will offset any customer bill impacts resulting from FPL's cost recovery associated with its payments for firm capacity and energy under the proposed Contract, and thereby result in net cost savings to FPL's customers.

Larsons

The Larson's assert the following.

- According to FPL, "There is no measureable capacity benefit from SWA."
- FPL's summer reserve margins are entirely adequate without the SWA Contract.
- The proposed Contract unjustly burdens FPL ratepayers with additional costs for energy and capacity that is not required to meet electric system reliability and integrity standards.

Decision

As discussed in Section B of this Order, the Expanded Facility will satisfy a portion of FPL's projected capacity needs; therefore, the Expanded Facility is projected to provide adequate electricity to FPL's system. As discussed in Section F of this Order, the Expanded Facility is estimated to produce savings to FPL's ratepayers. FPL estimates that if the Company recovered the costs during the year in which the advanced funding payment is made, the effect on a typical customer's monthly bill will be approximately $0.71 per month or $8.52 for the one-year period.

Upon review, we find that there is a need for the SWA Expanded Facility, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, F.S.

D. Need for Fuel Diversity and Supply Reliability

We have been asked to determine whether there is a need for the SWA Expanded Facility, taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519, F.S.

Joint Applicants

The Joint Petitioners assert the following.

- Because this is a renewable energy project, there will be an increase in fuel diversity and supply reliability while reducing reliance on fossil fuels in the production of electricity.
- The proposed Expanded Facility will result in up to 90 MW of additional base load generating capacity using renewable fuel for FPL.
- The proposed Expanded Facility will increase FPL's fuel supply reliability because of the abundant supply of MSW as a fuel source and will further enhance supply reliability because it is a locally transported fuel source.

Larsons

The Larsons assert the following.

- There is no need for the SWA Expanded Facility, taking in account the need for fuel diversity and supply reliability.
- FPL recently extended the PPA for the SWA's Existing Facility and already has solar.
- The FPL summer reserve margins are entirely adequate without the SWA Contract.
- The proposed Contract unjustly burdens FPL ratepayers with additional costs for energy and capacity that is not required for fuel diversity and supply reliability.

Decision

Pursuant to Section 403.519, F.S., we must consider the need for fuel diversity on a utility's system when evaluating a petition for need. FPL asserts that over 60 percent of FPL's existing generation is derived from natural gas and that approximately 1.2 percent from renewable generation and that adding the Expanded Facility will increase FPL's renewable generation mix from 1.2 percent to 1.6 percent and decrease FPL's dependency on natural gas from 63.6 percent to 63.3 percent.[11] The record indicates the committed capacity of the Expanded Facility will fall somewhere in the range of 70 MW–80 MW and generate approximately 575,000 MWH of energy annually. While the energy from the Expanded Facility should increase the amount of renewable energy on FPL's system approximately 38 percent, the overall contribution from renewable energy will remain small on FPL's system at less than 1.6 percent. Such a result is not surprising given the relative difference in size between the Expanded Facility (70-80 MW) and FPL's existing system (over 23,000 MW).

Upon review, we find that the Joint Petitioners are persuasive in their argument that the Expanded Facility will add diversity to FPL's generation fleet and enhance supply reliability. The proposed Expanded Facility will reduce FPL's reliance on fossil fuels while adding approximately 70-80 MW of base load renewable generation to FPL's fuel mix.

We find that there is a need for the SWA Expanded Facility, taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519, F.S.

E. Renewable Energy, Technologies, Conservation

We have been asked to determine whether there are any renewable energy sources and technologies, as well as conservation measures, taken by, or reasonably available to, FPL or SWA which might mitigate the need for the SWA Expanded Facility as this criterion is used in Section 403.519, F.S.

Joint Petitioners

The Joint Petitioners assert the following.

- No renewable energy sources, technologies, or conservation measures are reasonably available to mitigate the need for the Expanded Facility.
- The SWA Expanded Facility will provide firm capacity during a period when FPL's system will have a capacity requirement.
- The Florida Legislature clearly declared in Section 377.709(1), F.S., that WTE facilities such as the proposed Expanded Facility are an effective conservation effort and preferred alternative to conventional solid waste disposal in the State of Florida.
- All cost-effective, reasonably achievable demand side management measures consistent with the Commission's Orders were recognized in the analysis of the resource options

[11] FPL's generation mix with the SWA Facility is based on the Expanded Facility having a committed capacity of 90 MW and producing 670,000 MWH of energy each year.

available as part of the evaluation of the purchase of electrical output from the Expanded Facility.

- SWA needs the proposed Expanded Facility by 2015 in order to maintain its ability to dispose of MSW in a reliable and environmentally sound manner available to meet the objectives and obligations of the SWA.

Larsons

The Larsons assert the following.

- Adherence to FPL's DSM goals will avoid the need for FPL to purchase the energy and capacity from the SWA Expanded Facility.
- FPL seeks to build an additional 500 MW of solar generation, but the Company has not included that new capacity in its resource plan.

Decision

The legislature has defined renewable energy as "electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power."[12] MSW is included in the legislature's definition of biomass.[13] Moreover, the legislature has declared 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."[14] In sum, the legislature has determined that MSW is a renewable energy source and that the generation of electricity from the combustion of MSW represents an effective conservation effort. Additionally, the record reflects additional environmental benefits from the proposal.

The record reflects that the calculation of FPL's reserve margin included projected DSM savings based on the goals established in 2009 and that FPL's adherence to the DSM goals established by this Commission[15] will not avoid the need for FPL to purchase the energy and capacity from the SWA Expanded Facility.

Upon review, we find that there are no renewable energy sources and technologies, or conservation measures, taken by, or reasonably available to, FPL or SWA which might mitigate the need for the SWA Expanded Facility as this criterion is used in Section 403.519, F.S.

F. Cost Effectiveness of Expanded Facility

We have been asked to determine whether the SWA Expanded Facility is the most cost-effective alternative available, as this criterion is used in Sections 377.709 and 403.519, F.S.

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[12] Section 366.91(2)(d), F.S.
[13] Section 366.91(2)(a), F.S.
[14] Section 377.709(1), F.S.
[15] Docket No. 080407-EG.

Joint Petitioners

The Joint Petitioners assert the following.

- The proposed Expanded Facility is the most cost-effective alternative available to SWA to meet its legal obligation to dispose of Palm Beach County's MSW while meeting its waste reduction, landfill conservation, and renewable energy objectives.
- Without the Expanded Facility, up to 3,000 tons per day of MSW will be sent to landfills with negative economic and environmental consequences.
- The Contract results in system cost savings on a cumulative present value of revenue requirements basis over the life of the Contract and will provide economic and environmental benefits to the customers of SWA, most of which are also FPL customers.
- FPL customers will receive approximately $80 million worth of value of deferral that they are receiving at a cost of approximately $56 million.

Larsons

The Larsons assert the following.

- FPL's reserve margins are adequate without the SWA Contract.
- FPL does not need to buy additional energy and capacity.
- Irrespective of how the resource plan was manipulated to fabricate a phantom need, the most cost-effective alternative is not purchasing unneeded energy and capacity from the SWA Expanded Facility.

Decision

Pursuant to Section 377.709(1), F.S., a funding program is intended to "encourage the development by local governments of solid waste facilities that use solid waste as a primary source of fuel for the production of electricity." For this Commission to approve the advanced funding Contract, the advanced funding payment for the Expanded Facility must be less than the net present value of the utility's avoided cost, or an amount which is not more than the amount of the design costs of the electrical component of the WTE facility.[16]

The record reflects a design cost of the electrical component of $56,643,942 and a committed capacity range between 70 MW and 80 MW. Based on a 2016 avoided unit, and 70 MW of committed capacity, the present value of the advanced funding payment for the design costs of the electrical component is less than the present value of FPL's current avoided costs. Therefore, compared to FPL's avoided costs contained in the record of this proceeding, customers could expect to see some savings. However, the record also reflects planning uncertainty that could affect the 2016 avoided unit. If the 2016 avoided unit is deferred by even a single year, then projected savings may not occur, making the advanced funding payment to SWA not cost-effective.

[16] Section 377.709(3)(b)1, F.S.

Because of this uncertainty, we approve the advanced capacity payment for the design cost of the electrical component subject to the following conditions: 1) SWA and FPL agree to exercise the option in the PPA to extend the Contract 26 months and specify in the Contract that the committed capacity will be between 70 and 80 MW; 2) the amended Contract must be filed with our staff for administrative review to determine whether it is consistent with this Order; 3) FPL's recovery of the advanced capacity payment shall be made during the year in which such payment is made. These conditions represent savings to FPL ratepayers and should ensure that the project and Contract are cost effective and that the advanced funding payment for the design costs of the electrical component is less than the net present value of the avoided capacity cost for the electric utility as required by Section 377.709(3)(b)1., F.S.

Upon review, and as amended above, we find that the project is cost effective for purposes of Chapter 403.519, F.S., and that the conditions related to approval of the advanced capacity payment are not intended to affect our determination of need for the Expanded Facility. Subject to the foregoing, we find that the SWA Expanded Facility is the most cost-effective alternative available, as this criterion is used in Sections 377.709 and 403.519, F.S.

G. Reasonableness, Prudence, Appropriateness of Contract

We have been asked to determine whether the proposed Contract between SWA and FPL is reasonable, prudent, and in the best interest of FPL's customers and appropriate and consistent with the provisions of Section 377.709, F.S.

Joint Petitioners

The Joint Petitioners assert the following:

- The Contract is significantly lower than FPL's avoided cost which demonstrates a cost savings to FPL's customers, that is reasonable, prudent, in the best interest of FPL's customers and consistent with Section 377.709, F.S.
- The SWA Expanded Facility will displace between 45 and 90 MW from higher cost units on FPL's system.
- The proposed Contract complies with the advanced funding mechanism of Section 377.709, F.S.
- Section 377.709, F.S., provides that if the SWA operates the Expanded Facility below a 70 percent capacity factor, then FPL's customers will receive a refund on a pro rata basis with interest for the capacity that was paid in advance.
- Not only is the advanced capacity payment a benefit for FPL customers, but a benefit for the SWA and its customers as well because it will allow the SWA to avoid the need for a separate taxable bond issue to fund the acquisition of the electrical component for the proposed Expanded Facility.
- Because the energy pricing on the Contract is tied to the 2011 Ten-Year Site Plan's avoided unit (2016), it will produce the lowest energy costs and displace higher cost units.

- The proposed Contract will result in savings for FPL's customers.
- The advanced capacity payment is the lower of the value to FPL's customers of the capacity provided by the facility or the design cost of the electrical component for the Expanded Facility.
- A committed capacity range of 45 MW to 90 MW and a capacity factor for the unit in the range of 70 percent to 85 percent will yield projected savings in the range of $4 million to approximately $67 million.
- Under every scenario and combination of the avoided unit permitted under the Contract, FPL customers will see savings.
- With a minimum committed capacity of 70 MW, the Contract will be more favorable and cost-effective to FPL's customers.

Larsons

The Larsons assert the following.

- FPL does not need to purchase energy and capacity from the SWA Expanded Facility.
- The proposed Contract unjustly burdens FPL ratepayers with additional costs for energy and capacity that is not required because FPL profits $60 million dollars from capitalizing an advanced capacity payment which violates Section 377.709(3)(b)1b, F.S.

Decision

Subject to the conditions set forth in Section F of this Order, the proposed Contract for capacity from the Expanded Facility should provide savings to FPL's ratepayers. Once commercial operation begins, energy for the Expanded Facility will be paid at a combination of fixed and floating energy rates. The percentage of the fixed energy rates has not been determined by SWA, but the Contract provides that the percentage of fixed energy pricing will not exceed 50 percent. The SWA asserts that it is important to fix a portion of the energy payment because doing so allows the promotion of rate stability. In terms of ratepayer risk, if actual fuel prices are lower than the fixed amount, then ratepayers will pay more than the energy price during that period. The Contract has a mechanism that protects consumers in the event that the Expanded Facility operates at less than 70 percent capacity factor. If the facility operates at less than a 70 percent capacity factor, FPL's customers will receive a refund on a pro rata basis with interest for the advanced funding payment.

Subject to the conditions set forth in Section F of this Order, we are persuaded by the Joint Petitioners that the proposed Contract between SWA and FPL is reasonable, prudent, and in the best interest of FPL's customers and appropriate and consistent with the provisions of Section 377.709, F.S.

H. Rules 25-17.200 through 25-17.310, F.A.C.

We have been asked to determine whether FPL's proposal to recover the advanced capacity payment to SWA through the Energy Conservation Cost Recovery clause pursuant to Section 377.709, F.S., is consistent with Rules 25-17.200 through 25-17.310, F.A.C.

Joint Petitioners

The Joint Petitioners assert the following.

- They are unaware of any proposal that has been brought before the Commission for approval pursuant to Section 377.709, F.S., and nothing in Rules 25-17.200 through 25-17.310, F.A.C., expressly addresses cost recovery for an advanced capacity payment under Section 377.709, F.S.
- FPL's proposed recovery mechanism is consistent with Section 377.709, F.S.
- FPL's recovery of the advanced capacity payment costs from its customers over the duration of the Contract is in the best interest of FPL's customers.
- The Contract provides an up-front advanced capacity payment to SWA for capacity during the term of the proposed Contract. As such, FPL will finance the payment through its balance sheet which will therefore tie its customers' payment for capacity to when the customers receive the benefit of that capacity. This is consistent with Commission practice of allowing recovery over time of investments by FPL under the Environmental Cost Recovery clause.

Larsons

The Larsons assert that FPL's proposal to recover the advanced capacity payment to SWA through the Energy Conservation Cost Recovery clause pursuant to Section 377.709, F.S., is not consistent with Rules 25-17.200 through 25-17.310.

Decision

Nothing in Rules 25-17.200 through 25-17.310, F.A.C., expressly address cost recovery for advanced funding under Section 377.709, F.S, and we are unaware of any proposal that previously has been brought to this Commission for approval pursuant to Section 377.709, F.S.

Both Section 377.709, F.S., and Rules 25-17.200 through 25-17.310, F.A.C., rely on the utility's avoided cost as a cap for capacity payments. Section 377.709(3)(b)1, F.S., allows an electric utility to provide advanced funding to a local government for the construction of the electrical component of a solid waste facility. Such payments must be the lesser of a) the net present value of avoided-capacity cost for the electric utility calculated over the period of time during which the local government contracts to provide electrical capacity to the utility, or b) an amount which is not more than the amount of the design costs of the electrical component of the solid waste facility. Rule 25-17.240, F.A.C., encourages investor-owned utilities and renewable generating facilities to negotiate contracts for the purchase of firm capacity and energy. The cost

recovery aspects of negotiated contracts are described in Rule 25-17.0832(2), F.A.C., which provides, in part, the following:

> Negotiated contracts will be considered prudent for cost recovery purposes if it is demonstrated by the utility that the purchase of firm capacity and energy from the qualifying facility pursuant to the rates, terms, and other conditions of the contract can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs by the purchasing utility at a cost to the utility's ratepayers which does not exceed full avoided costs.

Upon review, we find that both Section 377.709, F.S., and Rules 25-17.200 through 25-17.310, F.A.C., protect ratepayers by limiting cost recovery to the utility's avoided cost. The proper method of recovery is discussed in Sections F and I of this Order. Subject to the foregoing, we find that FPL's proposal to recover the advanced capacity payment to SWA through the Energy Conservation Cost Recovery clause pursuant to Section 377.709, F.S., is consistent with Rules 25-17.200 through 25-17.310.

I. Recovery of the Advanced Capacity Payment

We have been asked whether to allow FPL to recover from its customers the advanced capacity payment associated with the Expanded Facility's electrical component made to SWA pursuant to and/or resulting from the proposed Contract, as well as the carrying costs and administrative costs incurred by FPL, through the Energy Conservation Cost Recovery clause, pursuant to Section 377.709, F.S.

Joint Petitioners

The Joint Petitioners assert the following.

- FPL is entitled to recover the amount of financing, including all carrying costs, plus reasonable and prudent administrative costs incurred by FPL associated with the construction of the electrical component of SWA's solid waste facility.
- The legislative intent is clear that since the SWA Expanded Facility is a conservation measure, it is permissible for FPL to recover its financing for the Expanded Facility from its customers through the Energy Conservation Cost Recovery clause.
- Based on a unit with a committed capacity of 90 MW, the net present value of the Ten-Year Site Plan's 2016 avoided capacity cost over the life of the proposed Contract is approximately $85,874,425 and the budgeted cost of the electrical component for the proposed Expanded Facility is $56,643,942. Therefore, pursuant to Section 377.709(3)(b)1, F.S., cost recovery is allowed based on the budgeted cost of the electrical component for the Expanded Facility.
- The firm capacity and energy from the Expanded Facility can reasonably be expected to contribute to the potential deferral of FPL's next planned fossil generating unit and provide fuel diversity and fuel stability to FPL's customers.

- By financing the advanced capacity payment, FPL is reasonably matching its customers' payments for the advanced capacity payment with the benefits those same customers are receiving through energy and cost savings.
- Once the Contract has expired, the SWA will have fulfilled its commitment of providing capacity at a price less than FPL's avoided capacity cost.

Larsons

The Larsons assert the following.

- This Commission should not allow FPL to recover from its customers the advanced capacity payment associated with the Expanded Facility's electrical component made to SWA pursuant to and resulting from the proposed Contract.
- The Advanced Capacity Payment is expressly limited to the "design cost of the electrical component" pursuant to Section 377.709(3)(b)1b, F.S.
- Unlike a traditional purchase power agreement, FPL profits $60 million dollars from capitalizing an advanced capacity payment equal to the "budgeted cost of the power block" in violation of the statute.

Decision

Pursuant to Section 377.709(3)(b)4, F.S., the amount of financing for the construction of the electrical component, including all carrying costs, plus all reasonable and prudent administrative costs incurred by the utility, must be recovered from the ratepayers of the electric utility pursuant to the provisions of the Florida Energy Efficiency Conservation Act. Pursuant to Sections 377.709(3)(b)1a-b, F.S., such payments must be the lesser of a) the net present value of avoided-capacity cost for the electric utility calculated over the period of time during which the local government contracts to provide electrical capacity to the utility, or b) an amount which is not more than the amount of the design costs of the electrical component of the solid waste facility. As such, based on the statute and costs of the electrical component and avoided unit, FPL shall be granted cost-recovery for the advanced funding payment towards the electrical component of the Expanded Facility.

FPL's recovery of the costs of the electrical component shall be in accordance with the conditions set forth in Section F of this Order. FPL must demonstrate that the carrying costs and administrative costs are reasonable and prudent. Subject to the foregoing, FPL shall be permitted to recover, through the Energy Conservation Cost Recovery clause, the fixed advanced funding plus the reasonable and prudent carrying costs and administrative costs incurred by FPL.

J. Amount of Recovery

We have been asked to determine the amount that FPL should be allowed to recover from its ratepayers.

Joint Petitioners

The Joint Petitioners assert the following.

- The advanced capacity payment recovered should be the lower of the deferred capacity value of FPL's avoided unit, i.e., the net present value of FPL's avoided capacity costs, or the design cost (budgeted cost) of the electrical component for the Expanded Facility.
- The design cost of the electrical component is the lower number between the avoided capacity cost and design costs of the electrical component based on the un-contradicted record in this proceeding.
- FPL should be allowed to recover the entire amount of the advanced capacity payment for the electrical component as well as associated finance and administrative costs through the ECCR clause.
- The advanced capacity payment on the firm design cost of the electrical component is $56,643,942.
- The advanced capacity payment does not imply ownership of the electrical component, or its output.
- The design cost of the electrical component is the budgeted cost to construct the component and Section 377.709(3)(b)1, F.S., uses the term "design costs of the electrical component of the solid waste facility" in connection with the amount of the advanced capacity payment from a utility and government.
- The term design costs, represents more than merely the "cost of design" of the electrical component, which are the engineering fees and professional charges for the electrical component.

Larsons

The Larsons assert the following.

- The Advanced Capacity Payment should be denied because there is no need.
- If granted by the Commission, the amount must be limited to the "design costs of electrical component" pursuant to Section 377.709(3)(b)1b, F.S.; this amount is $1,657,500.
- FPL should not profit $60 million from a PPA.

Decision

The record reflects that the cost of design refers to engineering fees and professional charges for the design of the electrical component system and that the cost of design is far less than the design cost of the electrical component. The record also reflects that the terms "design costs" and "budgeted costs" have the same meaning and refer to the estimated cost of construction for the electrical component of the Expanded Facility. Section 377.709(3)(b), F.S., does not limit funding to only the engineering fees and professional charges of the electrical component. Upon review, we find that "design cost" is the estimated or budgeted cost of the

electrical component. The record does not support the assertion that the design cost is limited to only engineering and professional service fees.

FPL shall be permitted to recover, in accordance with the conditions set forth in Section F of this Order, the fixed advanced funding amount of $56,643,942, as well as the reasonable and prudent carrying costs and administrative costs incurred by FPL.

K. Capacity Cost Recovery Clause

We have been asked to determine whether, to the extent FPL incurs firm capacity costs associated with the Contract between SWA and FPL that are not recovered through the ECCR clause, FPL should be allowed to recover those costs through the Capacity Cost Recovery clause.

Joint Petitioners

The Joint Petitioners assert the following.

- FPL should be permitted to recover firm capacity costs associated with the proposed Contract, if any, through the Capacity Cost Recovery clause if the Commission does not permit recovery of such costs through the ECCR clause.
- FPL and other investor-owned utilities are routinely authorized to recover through the Capacity Cost Recovery clause the full measure of prudently incurred capacity payments made in connection with power purchases.

Larsons

The Larsons assert the following.

- FPL should not be allowed to recover capacity costs through the ECCR or Capacity Cost Recovery clause.
- There is no need for FPL to purchase the energy and capacity from the SWA Expanded Facility under the proposed PPA.
- FPL should not be allowed to profit $60 million under the proposed PPA.
- FPL wants customers to pay for something that is not required because FPL will profit.

Decision

This is a case of first impression regarding the advanced funding of an electrical component and reasonable and prudent administrative costs pursuant to Section 377.709, F.S. Normally, investor-owned utilities are authorized to recover costs incurred in purchased power contracts through the Capacity Cost Recovery clause. However, pursuant to Section 377.709(3)(b)4, F.S., the advanced funding payment must be recovered from FPL's ratepayers in accordance with the provisions of the Florida Energy Efficiency and Conservation Act ("FEECA"). FEECA also governs this Commission's role regarding conservation goals and program approval. In this context, we have historically employed the Energy Conservation Cost

Recovery ("ECCR") clause for utility recovery of expenditures for conservation programs. The record in this case reflects that there are no other capacity payments except those made for the advanced funding. Upon review, we find that FPL shall be authorized to recover the funding payment, carrying costs, and reasonable and prudent administrative costs through the ECCR clause in accordance with the conditions set forth in Section F of this Order. As such, FPL shall not be permitted to recover firm capacity costs associated with the Contract between SWA and FPL through the Capacity Cost Recovery Clause.

L. Fuel and Purchased Power Cost Recovery Clause

We have been asked to determine whether FPL should be permitted to recover from its customers, through the Fuel and Purchased Power Cost Recovery clause, all payments for energy made to SWA pursuant to and/or resulting from the proposed Contract between SWA and FPL.

Joint Petitioners

The Joint Petitioners assert the following.

- FPL should be allowed to recover all payments for energy made to SWA pursuant to the proposed Contract through the Fuel and Purchased Power Cost Recovery clause.
- By entering into the proposed Contract, FPL's customers will benefit from fuel savings, variable operation and maintenance savings, and environmental savings which all outweigh the costs that FPL will recover from its customers.
- FPL and other investor-owned utilities are routinely authorized to recover through the Fuel and Purchased Power Cost Recovery clause the full measure of prudently incurred energy payments made in connection with power purchases and such payments under the proposed Contract should be permitted under the fuel clause.

Larsons

The Larsons assert the following.

- FPL should not be allowed to recover from its customers all payments for energy made to SWA pursuant to and/or resulting from the proposed Contract through the Fuel and Purchased Power Cost Recovery clause.
- There is no need for FPL to purchase the energy and capacity from the SWA Expanded Facility under the proposed PPA.
- FPL's summer reserve margins are adequate without the SWA Contract.
- The proposed Contract unjustly burdens FPL's ratepayers with additional costs for energy and capacity that is not required.

Decision

It has been this Commission's practice to permit investor-owned utilities to recover prudent energy payments incurred pursuant to purchased power agreements through the Fuel and Purchased Power Cost Recovery clause. Section 377.709(3)(b)2, F.S., provides the following:

> If the commission determines that energy payments to the local government are appropriate, such payments may not be greater than the lesser of:
> a. the hourly incremental energy rates of the electric utility as provided for in its approved tariffs over the period of the contract; or
> b. the energy costs associated with the avoided-capacity costs of the electric utility as determined by the Commission.

Before the commercial operation date of the Expanded Facility, FPL will pay the SWA for each MWH of energy at a rate equal to 99 percent of its as-available avoided energy costs for FPL's Southeastern/Eastern region. Once the Expanded Facility comes on-line, FPL will pay the SWA for the energy at a combination of fixed and floating energy rates.

The percentage fixed energy rates for the Expanded Facility has not been determined; however, the amount will not exceed 50 percent. Once the fixed percentage has been determined, for each month of the calendar year, the payment for the fraction of fixed energy rates will be calculated as the total net generation for each hour of each month, times the fraction of fixed energy rates, times the forecasted energy rates included in the Contract summed over all hours of the month. The calculation to obtain a yearly average of the fraction of fixed energy rates consists of taking each complete calendar month and including those results in a cumulative average of the partial calendar year.

Prior to commercial operation, the floating energy payment will be calculated as the sum over all hours of the month, times the generation for the hour, times the as-available avoided energy costs for FPL's Southeastern/Eastern region, times 99 percent. After commercial operation, the floating energy payment will be calculated as the sum over all hours of the month, times the generation for the hour, times the lesser of avoided energy cost of the avoided unit or as-available avoided energy costs for FPL's Southeastern/Eastern region.

Upon review, we find that FPL shall be permitted to recover, through the Fuel and Purchased Power Cost Recovery clause, all reasonable and prudent payments for energy made to SWA and/or resulting from the proposed Contract between SWA and FPL.

M. Joint Petition and Cost Recovery

We have been asked to determine, based on the resolution of issues in this Docket, whether we should grant the Joint Petition for modification to determination of need by SWA and FPL and for recovery of purchased power Contract costs.

Joint Petitioners

The Joint Petitioners assert the following.

- We should grant the Joint Petition with approval of a) the requested Modification to the Determination of Need, b) the proposed purchase power agreement between SWA and

FPL, and c) the requested cost recovery and regulatory accounting treatment associated for FPL with the proposed purchase power agreement.

- The record overwhelmingly establishes that SWA's Expanded Facility and the associated proposed purchase power Contract with FPL will result in significant benefits for the customers of SWA and FPL.
- The evidence in the case demonstrates that the Expanded Facility will meet SWA's need for effective and efficient disposal of MSW in Palm Beach County for SWA's customers and the resulting renewable energy electrical output will produce cost savings for FPL's customers.
- Without the Expanded Facility and proposed Contract, SWA will use up its scarce landfill resources at an increased rate, and FPL's customers will not enjoy the associated cost savings from the Expanded Facility's electrical output and the added benefit of increased renewable energy generation.

Larsons

The Larson's assert the following.

- We must deny the determination of need, cost recovery, and Contract approval requested within the Joint Petition.
- FPL has no need to purchase energy and capacity from the SWA Expanded Facility.
- The PPA unjustly burdens FPL ratepayers with additional costs for energy and capacity that is not required.

Decision

After considering all the evidence contained in the record, and, subject to the conditions set forth in Section F of this Order, we shall approve the Joint Petition for modification to determination of need for the Expanded Facility. Similarly, and subject to the same conditions, pursuant to Section 377.709(3)(b)4, F.S., we shall approve the associated regulatory accounting and purchase power agreement cost-recovery through the ECCR clause. FPL must demonstrate that carrying costs and administrative costs are reasonable and prudent during the annual ECCR proceedings.

N. Closing the Docket

Upon review, we find that this Docket shall remain open pending our staff's administrative review of the Contract between SWA and FPL for conformity with the conditions set forth in Section F of this Order. If the Contract so conforms, the Docket will be closed administratively. If the Contract does not conform, the Contract and advanced payment are not approved and the Docket shall remain open for further action by this Commission.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the SWA is a proper applicant within the meaning of Section 403.519, F.S. It is further,

ORDERED that there is a need for the SWA Expanded Facility, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, F.S. It is further,

ORDERED that there is a need for the SWA Expanded Facility, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, F.S. It is further,

ORDERED that there is a need for the SWA Expanded Facility, taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519, F.S. It is further,

ORDERED that there are no renewable energy sources and technologies, or conservation measures, taken by, or reasonably available to, FPL or SWA which might mitigate the need for the SWA Expanded Facility as this criterion is used in Section 403.519, F.S. It is further,

ORDERED that, subject to the conditions set forth in the body of this Order, the SWA Expanded Facility is the most cost-effective alternative available, as this criterion is used in Sections 377.709 and 403.519, F.S. It is further,

ORDERED that, subject to the conditions set forth in the body of this Order, the proposed Contract between SWA and FPL is reasonable, prudent, and in the best interest of FPL's customers and appropriate and consistent with the provisions of Section 377.709, F.S. It is further,

ORDERED that FPL's proposal to recover the advanced capacity payment to SWA through the Energy Conservation Cost Recovery clause pursuant to Section 377.709, F.S., is consistent with Rules 25-17.200 through 25-17.310, F.A.C. It is further,

ORDERED that, subject to the conditions set forth in the body of this Order, FPL shall be permitted to recover, through the Energy Conservation Cost Recovery clause, the fixed advanced funding amount of $56,643,942, plus the reasonable and prudent carrying costs and administrative costs incurred by FPL. It is further,

ORDERED that FPL shall be permitted to recover, subject to the conditions set forth in the body of this Order, the fixed advanced funding amount of $56,643,942 as well as the reasonable and prudent carrying costs and administrative costs incurred by FPL. It is further,

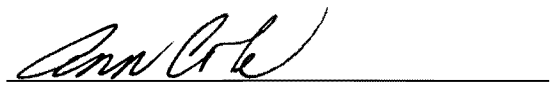
ORDERED that FPL shall not be permitted to recover firm capacity costs associated with the Contract between SWA and FPL through the Capacity Cost Recovery Clause. It is further,

ORDERED that FPL shall be permitted to recover from its customers, through the Fuel and Purchased Power Cost Recovery clause, all reasonable and prudent payments for energy made to SWA pursuant to and/or resulting from the proposed Contract between SWA and FPL. It is further,

ORDERED that, subject to the conditions set forth in this Order, the Commission hereby grants the Joint Petition for modification to determination of need by SWA and FPL and for recovery of purchased power Contract costs. It is further,

ORDERED that this Docket shall remain open pending our staff's administrative review of the Contract between SWA and FPL for conformity with the conditions set forth in the body of this Order. If the Contract so conforms, the Docket shall be closed administratively. If the Contract does not conform, the Contract and advanced payment are not approved and the Docket shall remain open for further action by this Commission.

By ORDER of the Florida Public Service Commission this 6th day of July, 2011.



ANN COLE
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CERTIFICATE OF SERVICE

In accordance with Section 28-106.110, Florida Administrative Code, documents are electronically served on each party or each party's counsel or representative at the last e-mail address of record. Where there is no e-mail address, documents are electronically served via the last facsimile number of record and, if unavailable, documents are served via U.S. Mail at the last address of record.

CWM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.