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March 1, 2002

By Hand Delivery

Ms. Blanca S. Bayó, Director
Commission Clerk & Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: Florida Public Service Commission Docket No. 001574-EQ
Proposed Amendments To Rule 25-17.0832, FAC,
Firm Capacity And Energy Contracts

Dear Ms. Bayó,

Enclosed for filing and distribution, on behalf of the Solid Waste Authority of Palm Beach County, Florida, please find 10 copies of the Direct Testimony of Marc Bruner.

If you have any questions or require anything further, please contact this office immediately.

Sincerely,


Richard A. Zambo
Florida Bar No. 312525

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enclosure

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed Amendments To Rule)
25-17.0832, FAC, Firm Capacity And)
Energy Contracts.)
_____)

Docket No. 001574-EQ

Filed: March 1, 2002

DIRECT TESTIMONY
OF
MARC C. BRUNER, Ph.D.
FOR
THE SOLID WASTE AUTHORITY
OF
PALM BEACH COUNTY, FLORIDA

DOCUMENT NUMBER-DATE

02402 MAR-18

FPSC-COMMISSION CLERK

1 DIRECT TESTIMONY OF MARC C. BRUNER, Ph.D.
2 ON BEHALF OF
3 THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY, FLORIDA
4 FPSC DOCKET NO. 001547-EQ
5
6

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

8 A. My name is Marc C. Bruner. I'm the Director of
9 Planning and Environmental Programs for the Solid Waste
10 Authority of Palm Beach County, with offices at 7501
11 North Jog Road, West Palm Beach, Florida, 33412
12

13 **Q. State briefly your educational background and experience.**

14 A. I have BA and MS Degrees in Botany from the University of
15 Wisconsin - Milwaukee, and a Ph.D. in Ecology from the
16 University of Tennessee - Knoxville. I have been
17 practicing as an environmental manager for over twenty
18 years in both government and the private sector. I have
19 been the Director of Planning and Environmental Programs
20 for the Authority for over 15 years. In that role I have
21 been responsible for the long range planning for the
22 Authority, including the waste-to-energy facility.
23

24 **Q. On whose behalf are you presenting this testimony?**

25 A. I am presenting this testimony and appearing on behalf of
26 the Solid Waste Authority of Palm Beach County, Florida
27 ("the Authority") in my capacity as Director of Planning
28 and Environmental Programs.
29

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

2 A. The Authority currently owns a municipal solid waste
3 facility that is defined as a solid waste facility or
4 Small Qualifying Facility ("SQF") by Commission Rule. As
5 such, we are eligible for Standard Offer Contracts
6 pursuant to Commission Rule 25-17.0832, F.A.C., the
7 subject of this proceeding. In addition to our existing
8 facility, there is the possibility that our SQF capacity
9 may be expanded, or that we would construct one or more
10 additional SQFs. Accordingly, we are very concerned with
11 maintaining our access to a viable standard offer
12 contract as is provided for in the current rules -
13 without the proposed amendments.

14

15 **Q. Please provide a brief general description of the**
16 **Authority's solid waste facility.**

17 A. The Authority disposes of approximately 1.3 million tons
18 of municipal solid waste annually. Approximately 800
19 thousand tons of this total is delivered to the waste-to-
20 energy facility for processing. Once at the facility, the
21 solid waste undergoes processing to separate recyclable
22 materials, primarily ferrous metal and aluminum, from
23 non-recyclable materials. The non-recyclable materials
24 are further processed into a material known as refuse
25 derived fuel (RDF). (This is in contrast to "mass burn"
26 facilities, which incinerate the waste stream first and
27 separate afterward.) RDF is fired in steam boilers to
28 produce steam for use in a 62-mW steam turbine-generator.
29 The facility generates approximately 450 thousand mWh of

1 electricity annually, the majority of which is sold to
2 Florida Power and Light Company (FPL), pursuant to a
3 contract for firm energy and capacity which was executed
4 in January 1987 and expires in March 2010.

5
6 **Q. Is the Authority's contract with FPL a standard offer
7 contract?**

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

10
11 **Q. If the Authority did not previously avail itself of the
12 standard offer contract, opting instead to negotiate a
13 contract with FPL, why are you concerned with the
14 proposed amendment to the standard offer rules?**

15 A. Unless you have attempted to sell firm capacity and
16 energy from a SQF to FPL, or to any electric utility, you
17 will probably not understand the tremendous value of
18 having the standard offer available as a "fall-back" or
19 "fail-safe" contract. If the standard offer had not been
20 available to us as an alternative to the negotiated
21 contract, I feel strongly that we would have been at a
22 great disadvantage to FPL.

23
24 **Q. Please elaborate.**

25 A. When anyone buys electricity from a regulated utility,
26 the utility is the only seller - this is a monopoly. As a
27 SQF, selling electricity to a regulated utility is very
28 similar to anyone buying electricity from a utility. We
29 are restricted to selling electricity produced by our

1 facility to the utility, just as buyers are restricted to
2 buying from the utility. The utility is the only buyer -
3 which is known as a monopsony, rather than a monopoly.
4 But either way, acting as a monopoly or a monopsony, the
5 utility has a great advantage in the market. It can set
6 prices too low when buying and too high when selling
7 because the other party to the transaction has no
8 alternative. In the same way that "standard" tariff
9 rates approved by this Commission are necessary to
10 prevent utilities from overcharging for electricity sold,
11 standard offer contracts are necessary to prevent
12 utilities from underpaying for electricity purchased.

13
14 **Q. You described the standard offer as a fall-back or fail**
15 **safe contract. What did you mean by that?**

16 A. Quite simply, I meant that if the standard offer contract
17 is a reasonable one and if the utility proves to be
18 unreasonable in negotiations, the Authority would have
19 accepted the standard offer in lieu of negotiation. In
20 other words, we could fall back on the standard offer.
21 The current rules, if enforced by the Commission would
22 result in reasonable standard offers, and would continue
23 to serve in this fall back or fail safe capacity.
24 However, the proposed amendments - in spite of the
25 apparently minor nature of the changes - would destroy
26 the value of the standard offer as both a reasonable
27 alternative and as a negotiation fall back or fail safe.

28
29

1 **Q. Would you please explain?**

2 A. Yes. At the time the Authority negotiated its current
3 contract with FPL, the standard offer that was in effect
4 at the time was a reasonable one with respect to terms,
5 conditions and pricing. If necessary, the Authority
6 could have accepted the standard offer, even though it
7 was obvious that a negotiated contract would have
8 benefited both the Authority and FPL. There were some
9 aspects of the standard offer contract that we wanted to
10 modify and some that FPL wanted modified, pointing to a
11 negotiated contract as the way to proceed, if both sides
12 would act in a reasonable fashion. We negotiated a
13 contract that deviated from the standard offer contract
14 in ways that benefited the Authority while enhancing the
15 value of our firm capacity and energy sale to FPL and its
16 ratepayers.

17
18 During the negotiation process with FPL, we encountered
19 difficulties on several occasions. However, the
20 existence of the standard offer - which in a sense
21 establishes the Commission's presence in the negotiation
22 process as a mediator - provided sufficient incentive to
23 overcome the sticking points.

24
25 **Q. What is the Authority's position with regard to the**
26 **proposed rule amendments?**

27 A. Our position is that the proposed amendments, if adopted,
28 will result in standard offer contracts that will not be
29 reasonable in their terms, conditions or pricing. As

1 such, the standard offer contract will no longer serve as
2 a fall back or fail safe mechanism. These changes will
3 eliminate the value of the standard offer contract as a
4 reasonable alternative to negotiations for the SQFs. This
5 will allow a purchasing utility to exercise its monopsony
6 power without regulatory constraint, and to take unfair
7 advantage of SQFs seeking to sell electricity.

8
9 Moreover, it is our view, and that of our legal counsel,
10 that the proposed rule amendments would clearly violate
11 both Florida and Federal law because they would result in
12 payments less than the specified "full avoided cost".
13 Our consultant, Mr. Frank Seidman will address this
14 aspect of our concern, and we will brief the legal issues
15 in our comments following these hearings.

16
17 We are also concerned that the Commission would propose
18 an amendment that runs contrary to the applicable law,
19 and requires the Authority and other local governments to
20 expend their time and financial resources in opposing the
21 amendments.

22
23 **Q. Do you have any suggestions or closing comments for the**
24 **Commissioners?**

25 A. As I mentioned, our consultant Mr. Frank Seidman will
26 address the details of the proposed amendment. However,
27 as a general comment, the Authority would suggest that
28 the Commission should be exploring ways to encourage the
29 development of SQFs - QFs in general and waste fueled QFs

1 in particular - rather than taking steps to further deter
2 the industry.

3
4 Waste-to-energy facilities are SQFs that provide
5 significant benefits to the State of Florida. Florida
6 has more waste-to-energy facilities than any other state,
7 and produces more electricity from waste than any other
8 state. Over half the population of the state of Florida
9 is served by solid waste management systems that utilize
10 waste-to-energy. These solid waste systems rely on the
11 revenue from the sale of electricity as part of their
12 overall funding base, and if the waste-to-energy SQFs are
13 not fairly compensated for the value of the electricity
14 they produce, the costs to our customers will have to be
15 increased.

16
17 **Q Does this conclude your direct testimony?**

18 **A.** Yes it does.
19
20
21