

Diamond Williams

110018-EU

From: Marsha Rule [Marsha@reuphlaw.com]
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The docket number and title of docket:

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 & Light Company, and for approval of associated regulatory accounting and purchased power agreement cost recovery.

The name of the party on whose behalf the document is filed:

Solid Waste Authority of Palm Beach County and Florida Power & Light Company

The total number of pages in the attached document: 11

A brief but complete description of each attached document:

Joint Prehearing Statement

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DOCUMENT NUMBER-DATE

02224 APR -4 =

FPSC-COMMISSION CLERK

4/4/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for Modification to) Docket No. 110018 - EU
Determination of Need for Expansion of an Existing)
Renewable Energy Electrical Power Plant in Palm) Filed: April 4, 2011
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)

**JOINT PREHEARING STATEMENT
OF
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY
AND
FLORIDA POWER & LIGHT COMPANY**

The Solid Waste Authority of Palm Beach County ("SWA") and Florida Power & Light Company ("FPL") (collectively, the "Petitioners" or "Joint Petitioners"), pursuant to Order Nos. PSC-11-0074-PHO-EU and PSC-11-0146-PCO-EU, hereby file their Joint Prehearing Statement in Docket No. 110018-EU.

- (1) **The name of all known witnesses whose testimony has been pre-filed or who may be called by the Joint Petitioners, along with subject matter of each such witness's testimony**

Witness

Subject Matter and Purpose of Testimony

Marc C. Bruner (SWA)

Provides background information and support for the petition for modification of its prior need determination, including the SWA's obligations and responsibilities as a creation of the Legislature and sole governmental entity empowered to manage, dispose of and recover energy from solid waste in Palm Beach County. Addresses SWA operations, programs and ongoing activities, including expansion of electrical generating capacity at its Palm Beach County site, more details of which are provided by SWA Witness Pellowitz.

DOCUMENT NUMBER-DATE

02224 APR-4 =

FPSC-COMMISSION CLERK

Daniel J. Pellowitz (SWA) Addresses the SWA's current and planned waste management programs and planning and implementation of the expansion of its waste-to-energy capability as a critical part of SWA's overall resource recovery and waste management operations. Demonstrates that SWA must add the Expanded Facility to its operations no later than 2015 in order to continue to meet its legal obligation to process and dispose of solid waste in Palm Beach County in an environmentally responsible manner.

Tom Hartman (FPL) Addresses and supports the SWA's requested modification to its existing determination of need to accommodate the Expanded Facility because it meets the need criteria in Section 403.519, Florida Statutes, and other requirements in Section 377.709, Florida Statutes. Presents and supports the reasons why the Commission should approve the SWA/FPL purchase power agreement for cost recovery and the associated regulatory accounting treatment.

(2) A description of all pre-filed exhibits and other exhibits that may be used by the Joint Petitioners in presenting its direct case (including individual components of a composite exhibit) and the witness sponsoring each:

Petitioners have pre-filed one 5-page exhibit with the testimony of Mr. Daniel J. Pellowitz which is identified as DJP-1.

<u>Exhibit</u>	<u>Content</u>	<u>Sponsoring Witness</u>
DJP-1	Solid Waste Separation & Disposition	Daniel J. Pellowitz

(3) A statement of the Joint Petitioners' basic position in the proceeding:

It is the basic position of the Joint Petitioners that the Commission should, as set forth in Joint Petitioner's Petition initiating this proceeding:

(a) grant an affirmative modification to a previously issued determination of need for 75 MW by increasing the amount of electric generating capacity "needed" at SWA site in the amount of 93 MW, to an aggregate combined total of 168 MW;

(b) approve the proposed SWA/FPL contract and associated advanced funding for SWA for the construction of the electrical component of its expanded solid waste facility; and

(c) make the following findings in approving the SWA/FPL agreement:

(i) the agreement is reasonable, prudent, and in the best interest of FPL's customers and complies fully with the requirements of Section 377.709, Florida Statutes, for advance funding, and

(ii) FPL is authorized to utilize the regulatory accounting treatment described in the Joint Petition and recover from its customers the costs associated with its advanced payment for capacity plus administrative costs through the energy conservation cost recovery (ECCR) clause and all payments for firm capacity not recovered through the ECCR clause and energy through the fuel and purchased power cost recovery clause.

- (4) A statement of each question of fact, question of law, and policy question that the Joint Petitioners consider at issue, along with the Joint Petitioner's position on each issue, and, where applicable, the names of the Joint Petitioner's witness(es) who will address each issue. Parties who wish to maintain "no position at this time" on any particular issue or issues should refer to the requirements of subsection C, below:**

ISSUE 1: Is Solid Waste Authority of Palm Beach County (SWA) the proper applicant for the requested modification to the determination of need within the meaning of Section 403.519, Florida Statutes?

Joint Petitioners: Yes, the SWA is the proper applicant. The Palm Beach County Solid Waste Act, Chapter 2001-331, Laws of Florida, specifically authorizes SWA to construct and operate resource recovery waste-to-energy facilities to generate electrical power through combustion of municipal solid waste, and to sell the resulting output to any governmental agency, individual, public or private corporation, municipality, or other person. SWA is, and has been continuously, engaged in such activities at its site in Palm Beach County, Florida, since 1989. Under the Florida Electrical Power Plant Siting Act, 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. As the proper and lawful applicant for site certification, SWA is the proper applicant for determination of need under Section 403.519, Florida Statutes.

(Witness: Bruner)

ISSUE 2: Is there 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, Florida Statutes?

Joint Petitioners: Yes, because 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.

(Witnesses: Hartman, Bruner)

ISSUE 3: Is there 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, Florida Statutes?

Joint Petitioners: Yes, because the contract to purchase power from the Expanded Facility is cost effective for FPL's customers. FPL's payments under the contract are lower than FPL's full avoided cost resulting in a cost savings to FPL's customers compared to the avoided unit.

(Witnesses: Hartman, Bruner)

ISSUE 4: Is there 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, Florida Statutes?

Joint Petitioners: Yes, because this is a renewable energy project with an indigenous fuel source (MSW), there will be an increase in fuel diversity and fuel supply reliability while reducing reliance on fossil fuels in the production of electricity. The Expanded Facility would result in up to 90 MW of additional base load generating capacity using renewable fuel.

(Witnesses: Hartman, Bruner)

ISSUE 5: Are there any renewable energy sources and technologies, as well as conservation measures, taken by or reasonably available to Florida Power & Light Company (FPL) or SWA which might mitigate the need for the SWA Expanded Facility as this criterion is used in Section 403.519, Florida Statutes?

Joint Petitioners:

No. There are no renewable energy sources, technologies or conservation measures that SWA has not taken or which are reasonably available and proven on the scale required by the Authority to mitigate SWA's need for the Expanded Facility. SWA's testimony demonstrates that the Expanded Facility is needed to maintain its ability to dispose of MSW in a reliable and environmentally sound manner, and is the most reliable, cost-effective, and environmentally sound alternative available to meet SWA's obligations and objectives. Without the Expanded Facility, SWA and Palm Beach County will consume scarce landfill capacity at a rate many times greater than with such facility.

(Witnesses: Bruner, Pellowitz)

No. All cost effective, reasonably achievable demand side management (DSM) measures consistent with the Commission's orders in FPL's DSM goals were recognized in the analysis of the resource options available to FPL as part of the evaluation of the purchase of electrical output from the Expanded Facility. The SWA/FPL contract would increase FPL's effective conservation efforts through the purchase of power from this renewable energy source.

(Witness: Hartman)

ISSUE 6: Is the SWA Expanded Facility the most cost-effective alternative available, as this criterion is used in Sections 377.709 and 403.519, Florida Statutes?

Joint Petitioners:

Yes. As SWA Witness Pellowitz's testimony demonstrates, the SWA uses a variety of methods to dispose of waste, and expansion of its Existing Facility is not only necessary but the most cost-effective alternative available to SWA to meet its legal obligation to dispose of Palm Beach County's municipal solid waste while meeting the Authority's waste reduction, landfill conservation and renewable energy objectives. Without the Expanded Facility, SWA would be forced to landfill increasing amounts of MSW or to incinerate without generating electricity from the process, with the result that the State will experience all of the consequences of such burning without the benefits intended by the Legislature, and the citizens within the area served by SWA will be unnecessarily burdened with substantial additional disposal costs that would otherwise be reduced or mitigated by revenues from the sale of electricity at avoided cost.

(Witness: Pellowitz)

Yes, FPL's purchase of the output of the Expanded Facility under the terms of the contract is a cost-effective alternative for FPL. The contract results in system cost savings on a cumulative present value of revenue requirements (CPVRR) basis over the life of the contract, including displacing higher cost generation in earlier years and recognizing the capacity cost benefit of offsetting/deferring a portion of the capacity needs of the next avoided unit.

(Witness: Hartman)

ISSUE 7: Is the proposed contract between SWA and FPL reasonable, prudent, and in the best interest of FPL's customers and appropriate and consistent with the provisions of Section 377.709, Florida Statutes?

Joint Petitioners: Yes, the fact that the contract cost is lower than FPL's avoided cost demonstrates a cost savings to FPL's customers, which is reasonable, prudent, and in the best interest of FPL's customers and consistent with Section 377.709, Florida Statutes.

(Witness: Hartman, Bruner)

ISSUE 8: Is 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., consistent with Rules 25-17.200 through 25-17.310, F.A.C.?

Joint Petitioners: Yes. FPL is unaware of any such proposal that has been brought to the Commission for approval under Section 377.709, Florida Statutes, in the past, 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, Florida Statutes. FPL has proposed a recovery mechanism that is consistent with Section 377.709, Florida Statutes, and the contract is in the best interest of FPL's customers whereby FPL recovers the advanced capacity payment costs from its customers over the duration of the contract.

(Witness: Hartman)

ISSUE 9: Should the Commission 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 (ECCR), pursuant to Section 377.709, F.S.?

Joint Petitioners: Yes, Section 377.709(3)(b)(4), Florida Statutes, states that an electric utility is entitled to recover from its customers costs associated with providing advanced funding to a local government for construction of a solid waste facility, such as SWA's Expanded Facility, under the provisions of the Florida Energy Efficiency and Conservation Act (FEECA). Specifically, 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. Therefore, with Commission authorization for the recovery of these costs, FPL can provide the requested advance funding to SWA.

(Witness: Hartman, Bruner)

ISSUE 9(a): If yes, what amount should FPL be allowed to recover from its ratepayers?

Joint Petitioners: The advance capacity payment recovered should be the lower of the deferred capacity value of FPL's avoided unit or the budgeted cost of the electrical component for the expanded facility. FPL should be permitted to recover through the ECCR the entire amount of the advanced capacity payment made by FPL to SWA that is associated with the Expanded Facility's electrical

component as well as the associated financing and administrative costs. The advanced capacity payment is presently estimated to be \$56.2 million.

(Witness: Hartman, Bruner)

ISSUE 9(b): To the extent FPL incurs firm capacity costs associated with the contract between SWA and FPL that are not recovered through the ECCR, should FPL be allowed to recover those costs through the capacity clause?

Joint Petitioners: Yes.

(Witness: Hartman)

ISSUE 10: Should FPL be allowed to recover from its customers all payments for energy made to SWA pursuant to and/or resulting from the proposed contract between SWA and FPL through the Fuel and Purchased Power Cost Recovery Clause?

Joint Petitioners: Yes.

(Witness: Hartman)

ISSUE 11: Based on the resolution of the foregoing issues, should the Commission grant the Joint Petition for Modification to Determination of Need by SWA and FPL and for Recovery of Purchased Power Contract Costs?

Joint Petitioners: Yes.

(Witnesses: Bruner, Pellowitz, Hartman)

ISSUE 12: Should this docket be closed?

Joint Petitioners: Yes, upon issuance of a final order granting the Joint Petition.

Additional Issues: Mr. and Mrs. Larson

ALTERNATIVE ISSUE 1: Are the Solid Waste Authority of Palm Beach County (SWA) and Florida Power & Light Company (FPL) the proper applicants within the meaning of Section 403.519, Florida Statutes?

Joint Petitioners: This issue is redundant and otherwise subsumed within Issue 1. In any event, SWA is the proper applicant within the meaning of Section 403.519, Florida Statutes, as it relates to the modification to the determination of need and site certification for the Expanded Facility for the underlying joint petition. FPL is not the applicant for

the power plant site certification application for the Expanded Facility, as filed with the Florida Department of Environmental Protection.

PAI 1: Was the joint petition complete at the time of submittal?

Joint Petitioners: This is not a proper issue for the Commission to decide in this proceeding. To the extent this issue is relevant, this issue is subsumed within Issue 11.

PAI 2: Should the joint petition be bound by the requirements of the 2010 Ten Year Site Plan which did not include the need for the SWA Expanded Facility and was approved by the Commission after the submittal of the joint petition?

Joint Petitioners: This is not a proper issue for the Commission to decide in this proceeding. The 2010 Ten Year Site Plan is not relevant to FPL's 2011 avoided unit, which forms the basis for the advanced capacity payment and energy payments under the proposed SWA/FPL contract. A regulated electric utility such as FPL must look to its most current avoided unit information for a contract proposed pursuant to Section 377.709, Florida Statutes, and that is what is proposed in this proceeding with the partial deferral of FPL's avoided unit through this contract and the associated savings to FPL's customers.

PAI 3: Should the joint petition be allowed to incorporate a proposed capacity addition that did not exist as the time the joint petition was filed?

Joint Petitioners: This is not a proper issue for the Commission to decide in this proceeding. To the extent this issue is relevant to the joint petition, this issue is subsumed within Issues 2 through 6 and 11.

PAI 4: ALTERNATIVE B: Should SWA be allowed to recover an Advanced Capacity Payment from FPL ratepayers that is nearly \$24 million dollars higher than that what was represented to the SWA Board during a public meeting held after the filing of the joint petition?

Joint Petitioners: This is not a proper issue for the Commission to decide in this proceeding. To the extent this issue is relevant to the joint petition, this issue is subsumed within Issues 9, 9a, and 9b.

PAI 5: Should the term "design costs of electrical component" be interpreted in a way that requires FPL ratepayers to pay an Advanced Capacity Payment to SWA equal to the total budgeted cost of the power block?

Joint Petitioners: To the extent this issue is relevant to the joint petition, this issue is subsumed within Issues 7, 9, and 9a.

PAI 6: Does the amount of the proposed Advanced Capacity Payment exceed the requirement of Section 377.709(3)(b)(1.)(b.), Florida Statutes?

Joint Petitioners: To the extent this issue is relevant to the joint petition, this issue is subsumed within Issues 7, 9, and 9a.

Additional Issues: Mr. and Mrs. Sullivan-Woods

PAI 4: ALTERNATIVE A: Should SWA be allowed to recover an Advanced Capacity Payment from FPL ratepayers that is nearly \$24 million dollars higher than the Advanced Capacity Payment amount that was represented to the SWA Board during its public meeting held on February 9, 2011?

Joint Petitioners: This is not a proper issue for the Commission to decide in this proceeding. To the extent this issue is relevant to the joint petition, this issue is subsumed within Issues 9, 9a, and 9b.

PAI 7: What is the projected rate impact that the Advanced Capacity Payment will have on FPL ratepayers?

Joint Petitioners: This is not a proper issue for the Commission to decide in this proceeding. It is a factual calculation that would result from the Commission's approval of the proposed Advanced Capacity Payment.

(5) A statement of issues to which the parties have stipulated:

Joint Petitioners would be willing and able to stipulate to the above issues and are hopeful that intervenors and Commission Staff will be able to do so as well.

(6) A statement of all pending motions or other matters the party seeks action upon:

Joint Petitioners object to all alternative and proposed additional issues identified in Order No. PSC-11-0170-PCO-EU and noted above.

Joint Petitioners have no pending motions or other matters upon which they seek Commission action other than their pending petitions.

(7) A statement identifying the party's pending requests or claims for confidentiality:

Joint Petitioner FPL has a pending claim for confidentiality on its response to Commission Staff Request for Production of Documents No. 8.

(8) Any objections to a witness's qualifications as an expert. Failure to identify such objection will result in restriction of a party's ability to conduct voir dire absent a showing of good cause at the time the witness is offered for cross-examination at hearing:

Joint Petitioners have no objections to the qualifications of any of the witnesses.

(9) A statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore:

Joint Petitioners have complied with all requirements of orders regarding prehearing procedures.

Respectfully submitted on this 4th day of April, 2011.

/s/ Marsha E. Rule

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CERTIFICATE OF SERVICE

I hereby certify the foregoing has been served by U. S. mail and email the following persons on this 4th day of April, 2011:

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/s/ Marsha E. Rule

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