

Diamond Williams

110018-EU

From: Kelly Sullivan [kelly.sullivan.woods@gmail.com]
Sent: Monday, April 04, 2011 3:42 PM
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Subject: Pre-hearing Statement Docket 110018-EU
Attachments: Pre-hearing Statement Docket 110018-EU (O0589458).DOC
Electronic Filing; revised to add Certificate of Service

a. Person responsible for this electronic filing:

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b. 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.

c. Document being filed on behalf of:

Mr. & Mrs. Frank Woods
570 Osprey Lakes Circle
Chuluota, FL 32766-6658

d. There are a total of 11 pages.

e. The document attached for electronic filing is: Petition to Intervene (Docket 110018-EU).pdf (O0582297).PDF

Thank you for your attention and cooperation to this request.

Sincerely,

s/ Kelly Sullivan
Kelly Sullivan - Attorney at Law

4/5/2011

DOCUMENT NUMBER-DATE
02245 APR-4 =
FPSC-COMMISSION CLERK

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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 Date: April 4, 2011
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WOODS/SULLIVAN

PREHEARING STATEMENT

1. The name of all known witnesses whose testimony has been prefiled or who may be called by the party, along with subject matter of each such witness's testimony.

Not applicable. The burden is on FPL and SWA to demonstrate need by offering direct testimony of witnesses subject to cross examination by the parties.

2. A description of all prefiled exhibits and other exhibits that may be used by the party in presenting its direct case (including individual components of a composite exhibit) and the witness sponsoring each.

The direct prefiled testimony and exhibits of all FPL and SWA witnesses, along with all interrogatory responses and documents produced by FPL and SWA may be used for the purpose of cross examination at hearing.

3. A statement of the party's basic position in the proceeding.

Basic Position (Woods / Sullivan)

The joint petition filed by FPL and SWA has failed to demonstrate a need for the SWA expanded facility. More importantly, there is no need for FPL to purchase the energy and capacity from the SWA Expanded Facility under the proposed Power Purchase Agreement. The petition as submitted lacks detail and is not fully definitized. The generating capacity from the SWA expanded facility was not included within FPL's 2010 Ten Year Site

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plan that was approved by the Commission subsequent to the submittal of the joint petition. FPL has admitted to the fact that “There is no measurable capacity benefit from SWA because FPL’s resource plan would not change as a result of this purchase.” (FPL response to Staff 1st INT No. 4 - Correction). Additionally, FPL has no need for the capacity from the SWA Expanded Facility as the FPL summer reserve margins are more than adequate without the SWA contract through 2025. (FPL response to Staff 1st INT No. 18 – Supplemental).

The FPL request to recover an Advanced Capacity Payment of nearly \$60 million dollars from FPL ratepayers under the proposed contract should also be denied by the Commission. The Advanced Capacity Payment is expressly limited to the “design costs of electrical component” pursuant to Section 377.709(3)(b)(1)(b.), Florida Statutes. Ignoring the plain language of this statute, FPL seeks to pay SWA an Advanced Capacity Payment equal to the “budgeted cost of the power block” under the proposed contract. It appears that FPL will be seeking to earn a return on debt and equity through amortizing the Advanced Capacity Payment over time while recovering the amount from FPL ratepayers. If this is indeed the case, then FPL is profiting at the expense of FPL ratepayers for purchasing excess capacity that is not required.

It is important to recognize that SWA has already has issued approximately \$775 million dollars in bonds to pay for the expanded facility. More importantly, SWA has recently accepted a bid from Babcock & Wilcox to build the expanded facility for \$668 million dollars. Therefore, the accepted bid amount is substantially less than the amount of debt issued to date. Accordingly, it is uncertain why the Advanced Capacity Payment is even required notwithstanding the statutory provision of Section 377.709(3)(b)(1)(b.), Florida Statutes.

SWA clearly has the ability to fund the design and construction of the expanded facility on its own. FPL should not seek to burden its ratepayers with the Advanced Capacity Payment. Based upon the discovery responses provided to date, the need for the project is questionable at best. Furthermore, the need to purchase power from the SWA expanded facility seems to be driven by meeting the prerequisite requirements necessary to facilitate additional solar construction under pending legislation. For these reasons, the Commission should properly deny the determination of need, cost recovery, and contract approval requested within the joint petition.

4. A statement of each question of fact, question of law, and policy question that the party considers at issue, along with the party’s position on each issue, and, where applicable, the names of the party's witness(es) who will address each issue.

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?

No position taken at this time pending resolution of the question as to whether an Investor Owned Utility (IOU) must be included as an applicant for the determination of need in accordance with *Tampa Elec. Co. v. Garcia*, 767 So. 2d 428 (Fla. 2000).

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? (Larsons)

Yes.

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?

No. The reliability and integrity of the electric system is adequate without the SWA Expanded Facility. FPL has admitted to the fact that "There is no measurable capacity benefit from SWA because FPL's resource plan would not change as a result of this purchase." (FPL response to Staff 1st INT No. 4 - Correction). Additionally, FPL has no need for the capacity from the SWA Expanded Facility as the FPL summer reserve margins are more than adequate without the SWA contract through 2025. (FPL response to Staff 1st INT No. 18 - Supplemental). The proposed contract unjustly burdens FPL ratepayers with additional costs for energy and capacity that is not required to meet existing FRCC electric system reliability and integrity standards.

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?

No. The SWA Expanded Facility is not required to ensure adequate electricity at a reasonable cost. FPL has admitted to the fact that "There is no measurable capacity benefit from SWA because FPL's resource plan would not change as a result of this purchase." (FPL response to Staff 1st INT No. 4 - Correction). Additionally, FPL has no need for the capacity from the SWA Expanded Facility as the FPL summer reserve margins are more than adequate without the SWA contract through 2025. (FPL response to Staff 1st INT No. 18 - Supplemental). The proposed contract unjustly burdens FPL ratepayers with additional

costs for energy and capacity that is not required to meet demand from FPL customers.

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?

No. The SWA Expanded Facility is not required for fuel diversity and supply reliability purposes. FPL recently modified the power purchase agreement for the existing SWA facility and is seeking to build an additional 500 MW of solar generation in the state. Supply reliability is not an issue because FPL has admitted to the fact that “There is no measurable capacity benefit from SWA because FPL’s resource plan would not change as a result of this purchase.” (FPL response to Staff 1st INT No. 4 - Correction). Additionally, FPL has no need for the capacity from the SWA Expanded Facility as the FPL summer reserve margins are more than adequate without the SWA contract through 2025. (FPL response to Staff 1st INT No. 18 – Supplemental). The proposed contract unjustly burdens FPL ratepayers with additional costs for energy and capacity that is not required.

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?

Yes. The FPL energy efficiency and conservation goals adopted by the Commission would avoid the need for FPL to purchase the energy and capacity from the SWA Expanded Facility altogether. Additionally, FPL is seeking to build an additional 500 MW of solar generation in the state. The additional 500 MW of solar capacity does not appear to have been included within the FPL resource plan.

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?

No. The generating capacity from the SWA expanded facility was not included within FPL’s 2010 Ten Year Site plan that was approved by the Commission subsequent to the submittal of the joint petition. FPL has admitted to the fact that “There is no measurable capacity benefit from SWA because FPL’s resource plan would not change as a result of this purchase.” Irrespective of how the resource plan is manipulated to create a phantom need that meets the avoided cost requirement, there

is no need to incur the additional cost to begin with. Accordingly, the SWA Expanded Facility is not the most cost-effective alternative available to FPL ratepayers because there is no need for FPL to purchase the energy and capacity from the SWA Expanded Facility under the proposed Power Purchase Agreement to begin with.

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?

No. The proposed contract is not reasonable, not prudent, not in the best interest of FPL's customers, and is not appropriate and consistent with the provisions of Section 377.709, Florida Statutes. There is there is no need for FPL to purchase the energy and capacity from the SWA Expanded Facility under the proposed Power Purchase Agreement. The petition as submitted lacks detail and is not fully definitized. The generating capacity from the SWA expanded facility was not included within FPL's 2010 Ten Year Site plan that was approved by the Commission subsequent to the submittal of the joint petition. FPL has admitted to the fact that "There is no measurable capacity benefit from SWA because FPL's resource plan would not change as a result of this purchase." (FPL response to Staff 1st INT No. 4 - Correction). Additionally, FPL has no need for the capacity from the SWA Expanded Facility as the FPL summer reserve margins are more than adequate without the SWA contract through 2025. (FPL response to Staff 1st INT No. 18 – Supplemental).

The FPL request to recover an Advanced Capacity Payment of nearly \$60 million dollars from FPL ratepayers under the proposed contract should also be denied by the Commission. The Advanced Capacity Payment is expressly limited to the "design costs of electrical component" pursuant to Section 377.709(3)(b)(1.)(b.), Florida Statutes. Ignoring the plain language of this statute, FPL seeks to pay SWA an Advanced Capacity Payment equal to the "budgeted cost of the power block" under the proposed contract. It appears that FPL will be seeking to earn a return on debt and equity through amortizing the Advanced Capacity Payment over time while recovering the amount from FPL ratepayers. If this is indeed the case, then FPL is profiting at the expense of FPL ratepayers for purchasing excess capacity that is not required.

It is important to recognize that SWA has already has issued approximately \$775 million dollars in bonds to pay for the expanded facility. More importantly, SWA has recently accepted a bid from Babcock & Wilcox to build the expanded facility for \$668 million dollars.

Therefore, the accepted bid amount is substantially less than the amount of debt issued to date. Accordingly, it is uncertain why the Advanced Capacity Payment is even required notwithstanding the statutory provision of Section 377.709(3)(b)(1.)(b.), Florida Statutes.

SWA clearly has the ability to fund the design and construction of the expanded facility on its own. FPL should not seek to burden its ratepayers with the Advanced Capacity Payment. Based upon the discovery responses provided to date, the need for the project is questionable at best. Furthermore, the need to purchase power from the SWA expanded facility seems to be driven by meeting the prerequisite requirements necessary to facilitate additional solar construction under pending legislation. For these reasons, the Commission should properly deny the determination of need, cost recovery, and contract approval requested within the joint petition.

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.?

No.

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.?

No. The FPL request to recover an Advanced Capacity Payment of nearly \$60 million dollars from FPL ratepayers under the proposed contract should be denied by the Commission. The amount of the Advanced Capacity Payment has increased by nearly \$24 million dollars since February 9, 2011. The Advanced Capacity Payment is expressly limited to the "design costs of electrical component" pursuant to Section 377.709(3)(b)(1.)(b.), Florida Statutes. Ignoring the plain language of this statute, FPL seeks to pay SWA an Advanced Capacity Payment equal to the "budgeted cost of the power block" under the proposed contract. It appears that FPL will be seeking to earn a return on debt and equity through amortizing the Advanced Capacity Payment over time while recovering the amount from FPL ratepayers. If this is indeed the case, then FPL is profiting at the expense of FPL ratepayers for purchasing excess capacity that is not required.

It is important to recognize that SWA has already issued approximately \$775 million dollars in bonds to pay for the expanded facility. More importantly, SWA has recently accepted a bid from

Babcock & Wilcox to build the expanded facility for \$668 million dollars. Therefore, the accepted bid amount is substantially less than the amount of debt issued to date. Accordingly, it is uncertain why the Advanced Capacity Payment is even required notwithstanding the statutory provision of Section 377.709(3)(b)(1.)(b.), Florida Statutes.

SWA clearly has the ability to fund the design and construction of the expanded facility on its own. FPL should not seek to burden its ratepayers with the Advanced Capacity Payment and profit from purchasing capacity that is not required. For these reasons, the Commission should properly deny the FPL request to recover the Advanced Capacity Payment from FPL ratepayers.

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

Recovery of the Advanced Capacity Payment should be denied for the reasons cited above. If granted by the Commission, the amount should be limited to the “design costs of electrical component” pursuant to Section 377.709(3)(b)(1.)(b.), Florida Statutes.

ISSUE 9B: 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?

No. There is no need for FPL to purchase the energy and capacity from the SWA Expanded Facility under the proposed Power Purchase Agreement. FPL has admitted to the fact that “There is no measurable capacity benefit from SWA because FPL’s resource plan would not change as a result of this purchase.” (FPL response to Staff 1st INT No. 4 - Correction). Additionally, FPL has no need for the capacity from the SWA Expanded Facility as the FPL summer reserve margins are more than adequate without the SWA contract through 2025. (FPL response to Staff 1st INT No. 18 – Supplemental).

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?

No. There is no need for FPL to purchase the energy and capacity from the SWA Expanded Facility under the proposed Power Purchase Agreement.

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?

No. The Commission should deny the determination of need, cost recovery, and contract approval requested within the joint petition.

ISSUE 12: Should this docket be closed?

Yes.

PROPOSED ADDITIONAL ISSUES:

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

No. (Woods / Sullivan does not object to the inclusion of this issue).

PAI 2: Should the joint petition be bound by 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? (Larsons)

Yes. (Woods / Sullivan does not object to the inclusion of this issue).

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

No. (Woods / Sullivan does not object to the inclusion of this issue).

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?? (Sullivan/Wood)

No.

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 what was represented to the SWA Board during a public meeting held after the filing of the joint petition? (Larsons)

No position taken. (Woods / Sullivan prefers the language of Alternative A for PAI 4).

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? (Larsons)

No. (Woods / Sullivan does not object to the inclusion of this issue).

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

Yes. (Woods / Sullivan does not object to the inclusion of this issue).

PAI 7: What is the projected average rate impact that the Advanced Capacity Payment will have on FPL ratepayers? (Sullivan/Wood)

No position taken pending receipt of the FPL response to Staff Interrogatory request. (Woods / Sullivan requests the inclusion of this issue).

5. A statement of issues to which the parties have stipulated

The parties have not stipulated any issues to date. A full stipulation on all issues, thereby avoiding the need to conduct a full hearing, could possibly be achieved if FPL would agree not to seek recovery for an Advanced Capacity Payment of nearly \$60 million dollars from FPL ratepayers. It appears that FPL will be seeking to earn a return on debt and equity through amortizing the Advanced Capacity Payment over time while recovering the amount from FPL ratepayers. If this is indeed the case, then FPL is profiting at the expense of FPL ratepayers for purchasing excess capacity that is not required. SWA has already has issued approximately \$775 million dollars in bonds to pay for the project. More importantly, SWA has recently accepted a bid from Babcock & Wilcox to build the WTE facility for \$668 million dollars. Therefore, the contract price is substantially less than the amount of debt issued to date. Accordingly, it is

uncertain why the Advanced Capacity Payment is even required notwithstanding the statutory provision of Section 377.709(3)(b)(1.) (b.), Florida Statutes.

SWA clearly has the ability to fund the project on its own. FPL should not seek to burden its ratepayers with the Advanced Capacity Payment. Based upon the discovery responses provided to date, the need for the project is questionable at best. Furthermore, the need to purchase power from the WTE facility seems to be driven by meeting the prerequisite requirements necessary to facilitate additional solar construction under pending legislation. Stipulation on all issues may be possible should FPL be open to constructive discussion regarding the need for the Advanced Capacity Payment and the amount of any such payment.

6. A statement of all pending motions or other matters the party seeks action upon.

Not applicable.

7. A statement identifying the party's pending requests or claims for confidentiality upon.

Not applicable.

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.

Not applicable.

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

None at this time.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following via Electronic Mail this 4th day of April, 2011 to all parties of record as indicated below.

s/ Kelly Sullivan
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