

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-11-0198-PHO-EU
ISSUED: April 21, 2011

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on April 18, 2011, in Tallahassee, Florida, before Commissioner Lisa Polak Edgar, as Prehearing Officer.

APPEARANCES:

RICHARD A. ZAMBO, ESQUIRE, Richard A. Zambo, P.A., 2336 S.E. Ocean Boulevard, Suite 309, Stuart, Florida 34996 and MARSHA E. RULE, ESQUIRE, Rutledge, Ecenia & Purnell, P.A., 119 South Monroe Street, Suite 202, Tallahassee, Florida 32301
On behalf of the Solid Waste Authority of Palm Beach County (SWA).

BRYAN S. ANDERSON, ESQUIRE, WILLIAM P. COX, ESQUIRE, and KEVIN DONALDSON, ESQUIRE, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408
On behalf of Florida Power & Light Company (FPL).

DANIEL R. LARSON and ALEXANDRIA LARSON, 16933 W. Narlena Drive, Loxahatchee, Florida 33470
On behalf of Mr. & Mrs. Daniel R. Larson (LARSONS).

CHARLES W. MURPHY, ESQUIRE and LAWRENCE D. HARRIS, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (STAFF).

MARY ANNE HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

PREHEARING ORDER

I. CASE BACKGROUND

On January 7, 2011, the Solid Waste Authority of Palm Beach County (SWA) and Florida Power & Light Company (FPL) filed a Joint Petition for Modification to Determination of Need for Expansion of an Existing Renewable Energy Electrical Power Plant in Palm Beach County and for Approval of Associated Regulatory Accounting and Purchased Power Agreement Cost Recovery pursuant to Sections 403.519 and 377.709, Florida Statutes (F.S.), and Rules 25-22.080 and 25-22.081, Florida Administrative Code (F.A.C.). The Commission issued a Notice of Commencement of Proceedings to the appropriate agencies, local governments, and interested persons on January 11, 2011. On March 3, 2011, Daniel and Alexandria Larson and Frank and Kelly Sullivan Woods were each granted leave to intervene in this proceeding, which has been scheduled for a formal administrative hearing on April 25, 2011. On April 18, 2011, Frank and Kelly Sullivan Woods filed a Notice of Withdrawal which was acknowledged by the Prehearing Officer at the Prehearing Conference held in this docket on that same date.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapters 120, 366, 377 and 403, Florida Statutes (F.S.). This hearing will be governed by said Chapters and Chapters 25-6 and 25-22, Florida Administrative Code, as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S.. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to

protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Marc C. Bruner	SWA	1, 2, 3, 4, 5, 7, 9, 9(a), 11
Daniel J. Pellowitz	SWA	5, 6, 11
Tom Hartman	FPL	2, 3, 4, 5, 6, 7, 8, 9, 9(a), 9(b), 10, 11

VII. BASIC POSITIONS

SWA/FPL: 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.

LARSONS: There is no need for the SWA Expanded Facility itself, and no need exists for FPL to purchase capacity and energy from the SWA Expanded Facility. The SWA Expanded Facility was not included within FPL's 2010 Ten Year Site that was approved by the Commission on January 11, 2011. The joint petition filed was incomplete, vague, and inconsistent with supporting the need for the SWA Expanded Facility. FPL has no need for the capacity from SWA Expanded Facility yet expects its ratepayers to pay 60 million dollars for an Advanced Capacity Payment to SWA. This payment has increased nearly 24 million dollars since February 9, 2011. The Advanced Capacity Payment is limited to the "design costs of electrical component" pursuant to Section 377.709(3)(b)(l)(b.), Florida Statutes, but FPL is seeking to pay SWA for the "budgeted cost of the power block." SWA has already issued 775 million in debt and clearly has the ability to fund the entire design and construction cost of the SWA expanded facility on its own. The Advanced Capacity Payment should be denied. Due to the flawed and incomplete nature in which this petition was presented, SWA and FPL have not demonstrated the need for the SWA expanded facility and the Florida Public Service Commission has no other alternative but to deny the petition.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

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)**

POSITIONS

SWA/FPL: SWA is the proper and lawful applicant for site certification and is the proper applicant for determination of need under Section 403.519, Florida Statutes. 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 and is an "electric utility" as defined in Section

403.503(15), F.S. of the Florida Electrical Power Plant Siting Act (the "PPSA"). Under the PPSA, SWA was the applicant with the Florida Department of Environmental Protection (FDEP) for site certification for its Existing Facility. Because SWA is properly the sole applicant for modification of that certification with FDEP in order to build the Expanded Facility for the reasons discussed above, FPL is not the applicant for site certification for the Expanded Facility, as filed with the FDEP.

(Witness: Bruner)

LARSONS: Yes.

STAFF: Staff has no position at this time.

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?**

POSITIONS

SWA/FPL: 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)

LARSONS: 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.

STAFF: Staff has no position at this time.

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?**

POSITIONS

SWA/FPL: 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)

LARSONS: 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.

STAFF: Staff has no position at this time.

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?**

POSITIONS

SWA/FPL: 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)

LARSONS: 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.

STAFF: Staff has no position at this time.

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?**

POSITIONS

SWA/FPL: 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)

LARSONS: 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.

STAFF: Staff has no position at this time.

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?

POSITIONS

SWA/FPL: 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)

LARSONS: 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.

STAFF: Staff has no position at this time.

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?

POSITIONS

SWA/FPL: 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.

(Witnesses: Hartman, Bruner)

LARSONS: 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.

STAFF: Staff has no position at this time.

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.?**

POSITIONS

SWA/FPL: 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)

LARSONS: No.

STAFF: Staff has no position at this time.

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.?

POSITIONS

SWA/FPL: 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.

(Witnesses: Hartman, Bruner)

LARSONS: 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.

STAFF: Staff has no position at this time.

ISSUE 9A: **IF YES, WHAT AMOUNT SHOULD FPL BE ALLOWED TO RECOVER FROM ITS RATEPAYERS?**

POSITIONS

SWA/FPL: 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.

(Witnesses: Hartman, Bruner)

LARSONS: 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.

STAFF: Staff has no position at this time.

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?**

POSITIONS

SWA/FPL: Yes.

(Witness: Hartman)

LARSONS: 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).

STAFF: Staff has no position at this time.

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?**

POSITIONS

SWA/FPL: Yes.

(Witness: Hartman)

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

STAFF: Staff has no position at this time.

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?**

POSITIONS

SWA/FPL: Yes.

(Witnesses: Bruner, Pellowitz, Hartman)

LARSONS: No. Due to the flawed and incomplete nature in which this petition was presented, SWA and FPL have not demonstrated the need for the SWA expanded facility and the Florida Public Service Commission has no other alternative but to deny the petition.

STAFF: Staff has no position at this time.

ISSUE 12: SHOULD THIS DOCKET BE CLOSED?

POSITIONS

SWA/FPL: Yes, upon issuance of a final order granting the Joint Petition.

LARSONS: Yes.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Name	Utility/Staff		
Daniel J. Pellowitz	SWA	DJP-1	Solid Waste Separation & Disposition

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

None.

XI. PENDING MOTIONS

None.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending claims for confidentiality.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than

50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed 10 minutes per party. Having jointly filed in this docket, SWA and FPL will share this time allotment. Similarly, post-hearing documents will be filed jointly by FPL and SWA and those joint filings will be governed by the limitations set forth at XIII above.

The Petition to Intervene, Motion in Opposition to Untimely Response, Prehearing Statement [revised], and Notice of Withdrawal of Frank and Kelly Sullivan Woods will be placed in the customer correspondence file for consideration in this docket.

The Commission takes official notice that SWA is the applicant in the Florida Department of Environmental Protection site determination proceeding, In Re: Solid Waste Authority of Palm Beach County Florida, Palm Beach Renewable Energy Facility # 2, DEP OGC Case No. 10-2026, DOAH Case No. 10-5935-EPP.

Alternative Issue 1 is adopted as a replacement for Issue 1. To the extent that Proposed Alternative Issues (PAI) 1 through 7 are relevant, they are subsumed in Issues 1 through 12; therefore, PAI 1 through 7 will be addressed accordingly and not as separate issues.

It is therefore,

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 21st day of April, 2011.



LISA POLAK EDGAR

Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

(S E A L)

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.