

Diamond Williams

110018-EU

From: Kelly Sullivan [kelly.sullivan.woods@gmail.com]
Sent: Monday, February 21, 2011 2:25 PM
To: Filings@psc.state.fl.us
Cc: ken.hoffman@fpl.com; will.cox@fpl.com; richzambo@aol.com; marsha@reuphlaw.com; mhammond@swa.org
Subject: Electronic Filing (Docket 110018-EU)
Attachments: Petition to Intervene (Docket 110018-EU).pdf (O0582297).PDF
 Electronic Filing

a. Person responsible for this electronic filing:

Ms. Kelly Sullivan - Attorney at Law
 570 Osprey Lakes Circle
 Chuluota, FL 32766-6658
 Phone: (321) 287-5062
 Email: kelly.sullivan.woods@gmail.com

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 6 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
 Attorney for Petitioners
 Florida Bar No. 814024
 570 Osprey Lakes Circle
 Chuluota, FL 32766-6658
 Phone: (321) 287-5062
 Email: kelly.sullivan.woods@gmail.com

Handwritten:
 Kelly Sullivan
 2-21-11
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DOCUMENT NUMBER-DATE

01164 FEB 21 =

FPSC-COMMISSION CLERK

2/21/2011

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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

FILED: February 20, 2011

PETITION TO INTERVENE

Pursuant to sections 120.569 and 120.57(1), Florida Statutes and Rules 25-22.039 and 28-106.205, Florida Administrative Code, Mr. Frank Woods and Ms. Kelly Sullivan, Husband and Wife, through their undersigned counsel, jointly file their Petition to Intervene in the above-captioned docket. In support thereof, the petitioners state as follows:

1. Name and address of the affected agency.

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

2. Name and address of the petitioners.

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

3. Service. All pleadings, motions, orders and other documents directed to the petitioners

should be served on:

Kelly Sullivan - Attorney at Law
570 Osprey Lakes Circle
Chuluota, FL 32766-6658
Phone: (321) 287-5062
Email: kelly.sullivan.woods@gmail.com

DOCUMENT NUMBER-DATE

01164 FEB 21 =

FPSC-COMMISSION CLERK

4. Notice of Docket. Petitioners received notice of this docket by reviewing the above-captioned docket on the Florida Public Service Commission (FPSC) website.

5. Statement of Substantial Interests. Petitioners are residential customers of Florida Power & Light Company (FPL) and served at the above-listed address.¹ The FPL electric bill constitutes a significant portion of the petitioners' monthly household expense. The petitioners have a substantial interest in the above-captioned docket as approval of the proposed modification will increase their electric rates. Additionally, the Joint Petition does not specifically identify the FPL avoided unit to be used for the advanced capacity payment² and energy payment associated with the proposed Expanded facility. Furthermore, SWA and FPL have not provided the Commission with the negotiated Power Purchase Agreement (PPA) for the Expanded facility. Moreover, petitioners allege that Paragraph 4 of the Term Sheet filed as Appendix A to the Joint Petition in the above-captioned docket is inconsistent with the statutory language of Section 377.709 (3)(b)1.b., Florida Statutes. Specifically (in relevant part), Appendix A (Term Sheet), Page 1 of 3, Paragraph 4 (Advanced Capacity Payments) indicates that the advanced capacity payment shall be the lower of:

“B. the budgeted cost of the power block for the Facility.”

In contrast, the statutory language of Section 377.709 (3)(b)1.b., Florida Statutes, expressly states that:

¹ Petitioners are also residential customers of FPL in St. Augustine, Florida.

² According to SWA documents, the advanced capacity payment is projected to be approximately \$36 million dollars and will be recovered from FPL ratepayers through the ECCR clause to fund the cost of electrical component for the Waste to Energy facility pursuant to section 377.709, Florida Statutes.

“An amount which is not more than the amount of the design costs of the electrical component of the solid waste facility as determined by the commission to be reasonable and prudent at the time of its order, or such portion thereof that is proportionate to the electrical capacity made available by contract to the electric utility.” (emphasis added).

Petitioners further assert that the term “design costs” is not expressly defined in the statute, and that industry custom clearly recognizes “design costs” as something substantially less than the manufacturing cost, total delivered cost, the cost of the electrical component, or the budgeted cost of the power block for the facility. Therefore, petitioners allege that the Term Sheet provision in the Joint Petition is inconsistent with the statutory language of Section 377.709 (3)(b)1.b., Florida Statutes. Petitioners note that the Office of Public Counsel (OPC) has not yet sought to intervene in the above-captioned docket to protect the interests of FPL ratepayers in this proceeding.

As the Advanced Capacity payment will be recovered directly from FPL ratepayers through the ECCR clause, and in the absence of a “yet to be negotiated” PPA for the Expanded facility, petitioners have a substantial interest in ensuring that the Advanced Capacity payment in the Term Sheet (and the PPA) is not greater than the amount expressly allowed for cost recovery by statute prior to approval by the Commission. Petitioners seek to conduct discovery on this issue prior to the discovery cutoff date, and to conduct cross-examination of the witnesses at the formal hearing. Based upon the above, petitioners hereby file a Petition to Intervene in the above-captioned docket to protect to their substantial interests and due process rights in the proceeding. As the cutoff date for discovery is April 4, 2011, and the formal hearing in

the above-captioned docket is currently scheduled for April 7, 2011, petitioners hereby request that the Commission take immediate action to grant this petition.

6. Standing. Petitioners are residential customers of FPL. Moreover, the petitioners' substantial interests are of the type that this proceeding is designed to protect. See, Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2nd DCA 1981). The purpose of the proceeding is to evaluate the proposed modification to the determination of need for expansion of the SWA facility previously granted by the Commission and consider the PPA cost recovery. The petitioners have a substantial interest in the above-captioned docket as approval of the proposed modification will increase their electric rates. Specifically, as the Advanced Capacity payment will be recovered directly from FPL ratepayers through the ECCR clause, and in the absence of a "yet to be negotiated" PPA for the Expanded facility, petitioners have a substantial interest in ensuring that the Advanced Capacity payment in the Term Sheet (and the PPA) is not greater than the amount expressly allowed for advanced cost recovery by statute prior to approval by the Commission. Accordingly, the proceeding in the above-captioned docket directly coincides with the substantial interests of the petitioners to ensure that FPL rates are fair, just, and reasonable.
7. Petition to Intervene. Petitioners hereby request the Commission to grant the Petition to Intervene in the above-captioned docket on the basis set forth in Paragraphs 1-6 above.

8. Disputed Issues of Material Fact. Disputed issues of material fact include, but are not limited to the following:

a. Petitioners assert that Paragraph 4.B (Advanced Capacity Payments) of the Term Sheet filed as Appendix A to the Joint Petition in the above-captioned docket is inconsistent with the statutory language of Section 377.709 (3)(b)1.b., Florida Statutes.

b. Petitioners assert that the provisions regarding the Advanced Capacity Payments in the yet to be negotiated PPA may also be inconsistent with the statutory language of Section 377.709 (3)(b)1.b., Florida Statutes based upon the apparent inconsistency in the Term Sheet, and the fact that the negotiated terms of the PPA as agreed to by the parties have not yet been provided to the Commission for review.

c. Petitioners assert that the cost effectiveness of the PPA cannot be evaluated in accordance with the statutory criteria until the avoided unit has been identified and the terms of the negotiated PAA are known.

d. Petitioners assert that the need for the additional proposed capacity was not included within the 2010 Ten Year Site Plan approved by the Commission in January 2011.

WHEREFORE, petitioners respectfully request the Commission to enter an order granting the Petition to Intervene in the above-captioned docket.

s/ Kelly Sullivan
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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 20th day of February, 2011 to all parties of record as indicated below.

s/ Kelly Sullivan
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