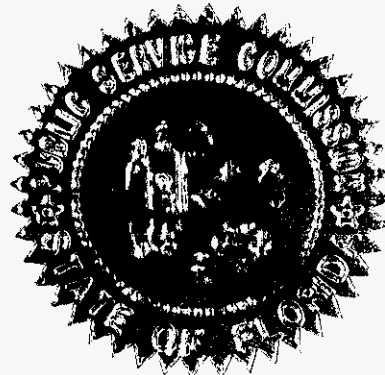


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110018-EU

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.



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PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING:

CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Monday, April 25, 2011

TIME: Commenced at 9:30 a.m.
Concluded at 3:04 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6734/6762

DOCUMENT NUMBER-DATE

02946 APR 29 =

FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

1 APPEARANCES:

2 ALEXANDRIA LARSON and DANIEL R. LARSON, 16933
3 W. Narlena Drive, Loxahatchee, Florida 33470, appearing
4 pro se.

5 WILLIAM P. COX, ESQUIRE; KEVIN DONALDSON,
6 ESQUIRE; and BRYAN S. ANDERSON, ESQUIRE, Florida Power &
7 Light Company, 700 Universe Boulevard, Juno Beach, Florida
8 33408-0420, appearing on behalf of Florida Power & Light
9 Company.

10 RICHARD A. ZAMBO, ESQUIRE, 2336 S.E. Ocean
11 Boulevard, Suite 309, Stuart, Florida 34996, appearing on
12 behalf of Solid Waste Authority of Palm Beach County.

13 MARSHA E. RULE, ESQUIRE, Rutledge, Ecenia &
14 Purnell, P.A., 119 South Monroe Street, Suite 202,
15 Tallahassee, Florida 32301, appearing on behalf of Solid
16 Waste Authority of Palm Beach County.

17 APPEARANCES (Continued):

18 CHARLES W. MURPHY, ESQUIRE, and LAWRENCE D.
19 HARRIS, ESQUIRE, Florida Public Service Commission, 2540
20 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
21 appearing on behalf of the Florida Public Service
22 Commission Staff.

1 APPEARANCES (Continued):

2 MARY ANNE HELTON, Deputy General Counsel,
3 Florida Public Service Commission, 2540 Shumard Oak
4 Boulevard, Tallahassee, Florida 32399-0850, Advisor to the
5 Florida Public Service Commission.

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P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Good morning, everyone. Let
3 the record show it is Monday, April the 25th. It's 9:30
4 a.m., and this is Docket Number 110018-EU. So let's call
5 this hearing to order. Staff, can I get you to read the
6 notice, please.

7 **MR. HARRIS:** Pursuant to notice issued
8 April 1st, 2011, this time and place has been set for the
9 hearing in Docket Number 110018-EU, petition for
10 determination of need by Solid Waste Authority of Palm
11 Beach County and Florida Power & Light Company, and
12 associated issues.

13 **CHAIRMAN GRAHAM:** Okay. Let's take appearances.
14 Who do we have? Let's start with you.

15 **MS. RULE:** Good morning, Chairman,
16 Commissioners. I'm Marsha Rule, and I'm here with Richard
17 Zambo on behalf of the Solid Waste Authority of Palm Beach
18 County.

19 **CHAIRMAN GRAHAM:** Okay. FP&L, anybody?

20 **MR. COX:** Yes. Good morning, Chairman Graham.
21 My name is Will Cox, and with me to my left is Kevin
22 Donaldson and also with us is Bryan Anderson appearing on
23 behalf of Florida Power & Light Company, with the address
24 that's set forth in the Prehearing Order.

25 **CHAIRMAN GRAHAM:** And Intervenors.

1 **MS. LARSON:** Good morning, Commissioners. My
2 name is Alexandria Larson, I'm an Intervenor, and this is
3 my husband, Daniel Larson.

4 **CHAIRMAN GRAHAM:** Good morning. Welcome.
5 Staff?

6 **MR. MURPHY:** Charles Murphy and Larry Harris
7 representing Commission Staff.

8 **MS. HELTON:** And Mary Anne Helton, Advisor to
9 the Commission.

10 **CHAIRMAN GRAHAM:** It looks like we've got a full
11 house. Is there, is there anybody here who would like to
12 provide public testimony on this matter? Seeing none,
13 let's move on.

14 All right. It's time for me to swear in the
15 witnesses. Who are our three witnesses? Could I get you
16 to stand and raise your hand?

17 (Witnesses collectively sworn.)

18 All right. Preliminary matters. Staff, are
19 there any preliminary matters that need to be addressed?

20 **MR. MURPHY:** I'm not aware of any, provided
21 everyone got what they were requesting before we started.
22 People had needed exhibit lists or anything. Has everyone
23 got what they need?

24 Nothing else.

25 **CHAIRMAN GRAHAM:** Is that it? All right. So

1 everybody does have a copy of the exhibit list?

2 MR. MURPHY: Yes.

3 CHAIRMAN GRAHAM: Are there any objections?

4 Ma'am, Ms. Larson.

5 MS. LARSON: Bear with me.

6 CHAIRMAN GRAHAM: Oh, you're fine.

7 MS. LARSON: We're at the Staff's Comprehensive
8 Exhibit List, is that what we're discussing?

9 CHAIRMAN GRAHAM: Yes.

10 MS. LARSON: The entire thing? Okay. I have no
11 problems with it.

12 CHAIRMAN GRAHAM: Okay. Anyone else? Yes, sir.

13 MR. COX: FPL has no problems with it.

14 MR. ZAMBO: Solid Waste Authority has no
15 problems with it.

16 CHAIRMAN GRAHAM: Okay. All right. Well, then
17 we'll have the Comprehensive Exhibit List marked as
18 Exhibit 1.

19 (Exhibit 1 marked for identification and
20 admitted into evidence.)

21 And I guess we're now to opening statements; is
22 that correct?

23 MS. LARSON: Pardon me, Mr. Chair.

24 CHAIRMAN GRAHAM: Yes.

25 MS. LARSON: There -- I did have a couple of

1 questions. I've never done the hearing part before. Just
2 as a public -- you know, spoke as a member of the public.

3 **CHAIRMAN GRAHAM:** Sure.

4 **MS. LARSON:** But I did have a couple -- I had a
5 few problems with a couple of the exhibits.

6 **CHAIRMAN GRAHAM:** Okay. We're just doing the
7 comprehensive list now.

8 **MS. LARSON:** Okay.

9 **CHAIRMAN GRAHAM:** We're going to go through and
10 do all the other ones one at a time.

11 **MS. LARSON:** Okay. I just didn't want to
12 miss --

13 **CHAIRMAN GRAHAM:** You're quite all right. Trust
14 me, we're in no rush. We'll get through this. And if
15 ever you want to speak, just go ahead and wave. All
16 right.

17 All right. Opening statements, who's going to
18 go first? SWA?

19 **MR. ZAMBO:** Yes, Chairman, we'll go first.

20 Good morning, Chairman Graham and Commissioners.
21 I'm Rich Zambo representing the Solid Waste Authority of
22 Palm Beach County. I appreciate the opportunity to
23 briefly discuss what I think is fundamentally a pretty
24 simple case.

25 The Authority and FPL are asking for two things:

1 A determination of need for a new waste-to-energy facility
2 and approval of a renewable energy contract between the
3 Authority and Florida Power & Light.

4 If you grant the request, two good things will
5 happen: The waste-to-energy facility that's a
6 cost-effective and environmentally preferred means of
7 waste disposal will be built, and FPL will secure a
8 long-term supply of renewable energy at significant
9 savings to its customers.

10 The weight of the evidence will show that it's a
11 very good deal for customers of both the Authority and
12 Florida Power & Light, and we are hopeful that you will
13 agree and that you will consider granting our request
14 today by bench ruling at the conclusion of the hearing.

15 A little bit about the Authority. It was
16 created in '75 by a special act as a dependent special
17 district to manage and dispose of solid waste within the
18 county. It's unique in Florida. The Authority relies on
19 waste management tools provided to it by the special act,
20 including energy recovery and generating electricity from
21 the burning of waste.

22 The Authority operates on a simple premise; it
23 recycles everything that it can, it burns and recovers
24 energy from whatever it can't recycle, and it sends as
25 little as possible to landfill to preserve valuable

1 landfill space.

2 This Commission first granted a determination of
3 need to the Authority in 1985 that allowed it to build its
4 existing waste-to-energy facility. Since it was completed
5 in 1989, the renewable energy from that plant has been
6 sold to FPL under a negotiated contract that expired in
7 2010, but in 20 -- or in 2009 this Commission approved a
8 negotiated extension of that contract that extends it
9 through 2032. If you approve the proposed contract before
10 you today, the Authority will also sell the renewable
11 energy from the new facility to FPL through 2033 -- 2032.

12 Burning waste in a waste-to-energy facility
13 serves two purposes: It produces renewable energy, but it
14 also extends the life of landfills by reducing the volume
15 of the waste by about 90 percent. The Authority's
16 existing facility is operating at full capacity, it's
17 burned all the waste that it can, so too much is now going
18 to landfill. The new facility will restore the needed
19 balance to the Authority's waste disposal options and
20 preserve valuable land space, landfill space.

21 If you don't grant the determination of need,
22 the Authority won't be able to build a new facility. The
23 existing landfill space will be used up at a rate of
24 3,000 tons of waste per day. Landfills are scarce,
25 expensive and difficult to site. In spite of its best

1 efforts, the Authority has been unable to find a suitable
2 site for a landfill. Because of that and after
3 considering its options, it's determined that the new
4 facility is in the best interest of its customers.

5 The contract we're asking you to approve is in
6 full compliance with Section 377.709 of the *Florida*
7 *Statutes*. That's a Florida law that specifically provides
8 for funding of the energy component of local government
9 waste-to-energy facilities by the utility. As the law
10 clearly provides and the contract spells out, the
11 Authority would receive a lump sum advanced capacity
12 payment from FPL to fund the electric portion of the new
13 facility during its construction. The advanced payment is
14 important to the Authority because tax refinancing, which
15 it normally uses to fund capital projects, can't be used
16 for the electrical components, and it's important to FPL
17 because the advanced capacity payment will be less than
18 FPL's avoided cost, resulting in a savings to FPL and its
19 customers.

20 In addition, the capital investment and job
21 creation from the new facility will boost the local
22 economies that are in FPL's service area to further
23 benefit FPL's customers. This contract advances Florida's
24 policy of encouraging renewable energy and it complies
25 with the Commission's rules that encourage negotiated

1 contracts between utilities and renewable energy
2 producers. We respectfully ask that you approve the
3 petition and thank you for your time.

4 **CHAIRMAN GRAHAM:** Thank you, sir.

5 FP&L.

6 **MR. COX:** Good morning, Chairman Graham and
7 Commissioners. Florida Power & Light Company is pleased
8 to partner with Solid Waste Authority of Palm Beach County
9 for the joint petition before you today in this docket.
10 As you've heard from SWA, the practical result of SWA's
11 expanded facility will be greater production of renewable
12 energy with less reliance on fossil fuel through the
13 combustion of municipal solid waste to generate
14 electricity, as well as the clear economic development
15 benefits that flow from a project like this. Accordingly,
16 FPL supports SWA's modification to its existing need
17 determination as provided in the joint petition.

18 Now as FPL witness Mr. Hartman will testify,
19 SWA's expanded facility and the proposed contract with FPL
20 to purchase all of the electrical output from the expanded
21 facility clearly satisfied the need determination
22 requirements of Section 403.519, *Florida Statutes*, based
23 on, one, increased fuel diversity and fuel supply
24 reliability; two, additional renewable energy generation
25 on FPL's system; and last but not least, three, the

1 purchase of energy from the expanded facility is
2 cost-effective for FPL's customers, providing a cost
3 savings to our customers along with the substantial
4 environmental benefits.

5 FPL is also pleased to support this joint
6 petition as it clearly implements the Florida
7 Legislature's goals and objectives found in Section
8 377.709, *Florida Statutes*, a statute that is uniquely
9 applicable to local government solid waste facilities.
10 The statute specifically encourages the type of
11 cooperation that you see here between a local government
12 entity and an electric utility, and is designed and
13 purposed to promote and encourage the development of solid
14 waste facilities such as that proposed by SWA. SWA's
15 expanded facility will generate renewable energy that FPL
16 will purchase at a cost savings to FPL's customers.

17 Statute 377.709 provides protections for FPL's
18 customers by requiring that any advanced capacity payments
19 or energy payments be cost-effective and thereby priced
20 such that FPL pays no more than its avoided costs, which
21 are essentially the costs that FPL would otherwise pay for
22 capacity and energy based on FPL's most currently
23 forecasted capacity and energy needs to serve its
24 customers.

25 Now, in fact, as FPL witness Mr. Hartman will

1 testify today, the proposed contract will result in
2 savings to FPL's customers. This is for two reasons.
3 First, the savings for FPL's customers will occur because
4 the advanced capacity payment to SWA is expected to be
5 less than the value of FPL's deferred capacity. And,
6 second, savings for FPL's customers will occur because the
7 energy payments provided for under the contract are less
8 than FPL's cost to generate that same energy. The clear
9 message is FPL's customers will benefit from FPL's cost
10 savings under this agreement.

11 Now also consistent with Section 377.709, and as
12 a necessary component of the relief requested in the joint
13 petition, FPL seeks cost recovery and appropriate
14 regulatory accounting treatment associated with the
15 payments to SWA under the proposed contract.

16 Section 377.709 provides that facilities like
17 SWA's expanded facility are an effective conservation
18 measure, and the utility's payments for capacity which
19 serve as financing are recoverable by the utility from its
20 customers under the Florida Energy Efficiency and
21 Conservation Act, otherwise known as FEECA.

22 As a result, FPL proposes to recover these
23 capacity costs through its energy conservation cost
24 recovery clause pursuant to FEECA over the term of the
25 proposed contract as FPL's customers will derive capacity

1 benefits over the term of the contract. Now FPL proposes
2 to recover its energy costs consistent with the Commission
3 practice through its fuel and purchased power clause.

4 It's important to keep in mind that during the time of the
5 contract FPL will recover its costs associated with the
6 SWA contract from FPL's customers, while FPL's customers
7 will during that same period receive a net benefit through
8 lower costs for energy and capacity from a renewable
9 energy source.

10 In sum, FPL sees this as a win-win for both SWA
11 and FPL's customers. The approval of the joint petition
12 will result in more efficient waste disposal for Palm
13 Beach County residents and cost-effective renewable energy
14 with cost savings for FPL's customers.

15 FPL respectfully requests that the Commission
16 approve the joint petition under Sections 403.519 and
17 377.709, *Florida Statutes*, including: One, the need
18 determination for SWA's expanded facility; two, the
19 approval of the proposed contract between SWA and FPL with
20 a finding that the contract is reasonable, prudent and in
21 the best interest of FPL's customers and consistent with
22 the requirements of Section 377.709; and, three, cost
23 recovery and requested regulatory accounting treatment for
24 FPL associated with the proposed contract.

25 Thank you for your attention and consideration.

1 **CHAIRMAN GRAHAM:** Thank you.

2 Ms. Larson.

3 **MS. LARSON:** Bear with me, Chair.

4 **CHAIRMAN GRAHAM:** Take your time.

5 **MS. LARSON:** With the, with the exhibits, I just
6 want to make sure -- I just -- there was four that I had
7 questions about. I didn't know what the protocol was
8 because we did the Staff's stipulated list, but there were
9 some, there are some exhibits that I had questions on. So
10 I --

11 **CHAIRMAN GRAHAM:** Well, what we plan on doing is
12 as we pull the different witnesses up, each one of those
13 witnesses will be corresponding to different exhibits.

14 **MS. LARSON:** Okay.

15 **CHAIRMAN GRAHAM:** And as -- you'll be allowed to
16 cross-examine those witnesses. And if you want at that
17 time as you're talking to those witnesses you can speak to
18 those exhibits.

19 **MS. LARSON:** Okay.

20 **CHAIRMAN GRAHAM:** And after you're done, I mean,
21 after you're done with your cross-examining, we'll find
22 out if there's any exhibits -- we'll let Staff go and
23 we'll find out if there's any exhibits that correspond
24 with that witness that you still have further questions
25 on, and you can still address it at that time.

1 MS. LARSON: Okay.

2 CHAIRMAN GRAHAM: Do you know, do you know what
3 the exhibits are right now so I'll make sure that we don't
4 pass by those before --

5 MS. LARSON: Yes. I just didn't want to get --
6 I watched several of your hearings to try to get a little
7 bit familiar. Everybody is -- every single one is
8 different, so -- but I did have, I did have them listed
9 here for you. I just wanted to get on the record in the
10 proper order.

11 CHAIRMAN GRAHAM: This is fine. I mean, this
12 way we'll make sure we don't pass it by.

13 MS. LARSON: Should I list them for you?

14 CHAIRMAN GRAHAM: Yes.

15 MS. LARSON: Number 4, number 6, number 8,
16 number 9 and number 10.

17 CHAIRMAN GRAHAM: We'll make sure all those get
18 addressed before we move those into the record.

19 MS. LARSON: Thank you. Appreciate that.

20 CHAIRMAN GRAHAM: Oh, no. Trust me, we're all
21 trying to figure this out.

22 MS. LARSON: Good morning, Commissioners. I've
23 never done an opening statement before.

24 The joint petition filed by FPL and the Solid
25 Waste Authority has failed to demonstrate the need for the

1 Solid Waste Authority expanded facility. More
2 importantly, there is no need for FPL to purchase the
3 energy and the capacity from the Solid Waste Authority
4 expanded facility under the proposed power purchase
5 agreement. The petition, as submitted, lacks detail and
6 is not fully defined.

7 The generating capacity for the Solid Waste
8 Authority expanded facility was not included in FPL's 2010
9 Ten-Year Site Plan that was approved by the Commission
10 subsequent to the submittal of the joint petition. FPL
11 has admitted to the fact there is no measurable capacity
12 benefit from, from the Solid Waste Authority because FPL's
13 resource plan would not change as a result of this
14 purchase.

15 Additionally, FPL has no need for capacity from
16 the Solid Waste Authority expanded facility as the FPL
17 summer reserve margins are more than adequate without the
18 Solid Waste Authority contract through 2025.

19 The FPL request to recover the advanced capacity
20 payment of nearly \$60 million from the FPL ratepayers
21 under the proposed contract should also be denied by the
22 Commission. The advanced capacity payment is expressly
23 limited to the design costs of the electrical component
24 pursuant to Section 377.709(3)(b)(1)(b), *Florida Statutes*.

25 Ignoring the plain language of the statute, FPL

1 seeks to pay the Solid Waste Authority an advanced
2 capacity payment equal to the budgeted cost of the power
3 block. Under the proposed contract it appears that FPL
4 will be seeking to earn a return on debt and equity with,
5 through capitalizing the amount -- through capitalizing
6 the advanced capacity payment over time while recovering
7 the amount from the FPL ratepayers. If this is indeed the
8 case, then FPL is profiting at the expense of FPL
9 ratepayers for purchasing excess capacity that is not
10 required.

11 It is important to recognize the solid, that the
12 Solid Waste Authority has already issued approximately
13 \$775 million in bonds to pay for the expanded capacity.
14 More importantly, the Solid Waste Authority has recently
15 accepted a bid from Babcock & Wilcox to build the expanded
16 facility for \$668 million. Therefore, the accepted bid
17 amount is substantially less than the amount of debt
18 issued to date. Accordingly, it is uncertain why the
19 advanced capacity payment is even required,
20 notwithstanding the statutory provision of Section
21 377.709(3)(b)(1)(b), *Florida Statutes*.

22 The Solid Waste Authority clearly has the
23 ability to fund and design the construction of the
24 expanded facility on its own. FPL should not seek to
25 burden the ratepayers with an advanced capacity payment.

1 For these reasons, the Commission should properly deny the
2 determination of need, cost recovery and contract approval
3 requested within this joint petition.

4 Finally, Commissioners, the fact that the Public
5 Counsel is not here today protecting the interest of FPL
6 ratepayers is reprehensible, and the very -- and it's very
7 telling of the situation facing many consumers in this
8 state today. Public Counsel is supposed to represent the
9 ratepayers before the Public Service Commission, as we pay
10 their salaries. The people of the State of Florida should
11 demand that Public Counsel do their job.

12 The ratepayers of Florida, even though the
13 Commission is here, we have, we have avenues that are
14 always supposed to be here to protect the ratepayers of
15 Florida. And this is one of my gravest concerns, that's
16 why I'm sitting here today because we have no, there's
17 nobody from the public taking care of the public today.
18 I'm worried about us. I don't know -- in my county
19 there's 96,403 empty homes, empty homes for the ratepayers
20 to have -- we, we need as much give and take as we can
21 possibly get today. Sometimes Tallahassee gets accused of
22 not paying attention to what's going on down south, but
23 there are counties, and I even spoke about, someone spoke
24 to me about Sarasota County, every county in the State of
25 Florida is in trouble. So please take that into

1 consideration. Thank you.

2 **CHAIRMAN GRAHAM:** Thank you, Ms. Larson.

3 Mr. Larson, did you have anything to add?

4 **MR. LARSON:** No. I, I stand behind my wife.

5 **CHAIRMAN GRAHAM:** Okay. Thank you, sir.

6 Okay. We've already sworn the witnesses, so the
7 witnesses are going to appear in the order as set forth in
8 the Prehearing Order. Cross-examining will be done by
9 Ms. Larson, the follow-up by Commission Staff. There will
10 be no friendly cross-examine, but you will be allowed to
11 rebut, if need be.

12 The first witness is Bruner, Bruner. And, sir,
13 you've already been sworn.

14 **MARC C. BRUNER**

15 was called as a witness on behalf of the Solid Waste
16 Authority of Palm Beach County and, having been duly
17 sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 **BY MR. ZAMBO:**

20 Q Mr. Bruner, would you please state your name and
21 address for the record.

22 A My name is Marc Bruner. My address is 425
23 Inglewood Drive, Palm Springs, Florida.

24 Q Did you prepare or have prepared under your
25 direction for filing in this proceeding a document

1 entitled Direct Testimony of Marc C. Bruner for the Solid
2 Waste Authority of Palm Beach County?

3 A Yes.

4 Q Do you have any changes or corrections you'd
5 like to make to your testimony?

6 A No.

7 Q If I were to ask you the same questions that are
8 contained in your direct testimony, would your answers be
9 the same?

10 A Yes.

11 (REPORTER'S NOTE: For ease of the record, the
12 prefiled Direct Testimony of Marc C. Bruner was inserted.)

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2
3 **DIRECT TESTIMONY**

4 **OF**

5 **MARC C. BRUNER**

6 **FOR**

7 **THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY**

8 **IN RE:**

9 **MODIFICATION TO DETERMINATION OF NEED**

10
11 **Q. Would you please state your name, occupation and business address?**

12 **A.** My name is Marc C. Bruner. I am the Chief Administrative Officer of the Solid Waste
13 Authority of Palm Beach County, with offices at 7501 North Jog Road, West Palm
14 Beach, Florida 33412 (the "Authority").

15
16 **Q. Briefly, what is your educational background and experience?**

17 **A.** I have BA and MS degrees in Botany from the University of Wisconsin – Milwaukee,
18 and a Ph.D. in Ecology from the University of Tennessee. I have been practicing as an
19 environmental manager for over 25 years in both government and the private sector. I
20 was the Director of Planning and Environmental Programs for the Authority for over 20
21 years. In that role I was responsible for environmental compliance - including the
22 conditions of the Florida Electrical Power Plant Siting Certification applicable to our site
23 - as well as the Authority's long range planning, including the additional waste-to-energy
24 facility ("WTE") capacity that is the subject of this proceeding.

25
26 In my current capacity as Chief Administrative Officer I now have additional
27 responsibilities for design and construction of new Authority facilities, including the

1 additional WTE facilities. My responsibilities also include administration of the
2 contracts for all Authority facilities where the operations have been privatized, including
3 recycling facilities and bio-solids processing facilities; maintenance of all Authority
4 facilities; risk management; and the Authority's safety programs.

5

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

7 **A.** I am presenting this testimony on behalf of my employer, the Solid Waste Authority of
8 Palm Beach County, Florida.

9

10 **Q. What is the purpose of your testimony?**

11 **A.** I provide relevant background information and support the Authority's petition for
12 modification of its prior need determination (the "Petition"). My testimony focuses on
13 the Authority's important obligations and responsibilities as a creation of the Legislature,
14 a political subdivision of Palm Beach County, and as the sole governmental entity
15 empowered to manage, dispose of and recover energy from solid waste in Palm Beach
16 County. Further, I describe the importance of the Authority's request for a determination
17 of need for the addition of approximately 105 megawatts of electric generation fueled by
18 municipal solid waste (the "Expanded Facility"). I also describe Authority operations,
19 programs and ongoing activities including expansion of electrical generating capacity at
20 our Palm Beach County site, more details of which are provided by Mr. Pellowitz.

21

22 **Q. Would you please describe the Authority and its purposes?**

23 **A.** The Authority is a local governmental entity that is a political subdivision of Palm Beach
24 County. More specifically, the Authority is a dependent special district created by the
25 Florida Legislature in 1975 by the Palm Beach County Solid Waste Act (the "Special

1 Act"). The Special Act was amended several times over the years, and was codified by
2 the Legislature in 2001 as Chapter 2001-331, Laws of Florida. A copy of the Special Act
3 is attached as Appendix A to the Petition.

4
5 The Special Act requires the Authority to adopt a comprehensive resource recovery and
6 waste management program to transport, store, separate, process, recover, recycle and
7 dispose of Palm Beach County's solid waste. Accordingly, by virtue of the Special Act,
8 the Authority provides municipal solid waste ("MSW") processing, disposal and
9 recycling services throughout all of the incorporated and unincorporated areas of Palm
10 Beach County, and also collects MSW in the unincorporated areas of the County. The
11 Authority is specifically required to engage in "recycling" and "resource recovery." As
12 defined in the Special Act in Section 5, paragraphs (17) and (18), these terms include the
13 use of solid waste as an energy source:

14 *"Recycling" means any process by which solid waste*
15 *materials are recovered and reused in manufacturing,*
16 *agricultural, power production, and other processes.;*

17 and

18 *"Resource recovery" means the process by which materials in*
19 *solid waste retaining useful physical or chemical properties*
20 *are reused or recycled for the same or other purposes,*
21 *including use as an energy source. (emphasis added)*

22
23 The term "resource recovery", as used in the Special Act and in general use through the
24 1970's and 1980's, was replaced by the term "waste-to-energy" in the 1990's, and today is

1 encompassed by the broader term “renewable energy”. When applied in the context of
2 MSW, these three terms all mean the same thing – the recovery from MSW of usable
3 byproducts including materials such as metals for their useful physical properties; and,
4 energy from the useful chemical properties.

5

6 The Special Act also vests the Authority with correspondingly broad powers and discretion
7 to enable it to carry out and fulfill its substantial resource recovery and waste management
8 responsibilities.

9

10 **Q. Would you please describe those broad powers of the Authority that you feel may be**
11 **particularly significant to this proceeding?**

12 A. Yes. The Special Act is quite broad, vesting the Authority with a wide range of both
13 powers and responsibilities. However, in Section 6 of the Special Act, the Legislature
14 vested the Authority with certain powers that I understand to be somewhat unique and of
15 which the Commission should be aware. I am referring to the Legislative grant of power
16 on page 9, subparagraph (8) authorizing the Authority to:

17 *“Acquire, construct, reconstruct, improve, maintain, equip, furnish,*
18 *and operate at its discretion such resource recovery and waste*
19 *management facilities as are required to carry out the purposes and*
20 *intent of this act and to meet the requirements of chapter 403, Florida*
21 *Statutes, and other applicable law.”;*

22 and the Legislative grant of power on page 15, subparagraph (15) authorizing the
23 Authority to:

1 *“Sell or otherwise dispose of any byproducts produced by the*
2 *operation of resource recovery or waste management facilities to any*
3 *governmental agency, individual, public or private corporation,*
4 *municipality, or any other person.”*

5 **Q. Would you explain the significance of the quoted provisions of the Special Act?**

6 A. Yes. In light of the substantial responsibilities imposed on the Authority to provide a
7 comprehensive, coordinated resource recovery and waste management program for all of
8 Palm Beach County, the Legislature vested the Authority with broad powers and
9 discretion in designing, implementing, maintaining and financially supporting such a
10 program. Importantly, the Special Act makes the Authority the sole determiner of what
11 facilities are required in meeting its waste management and resource recovery
12 obligations, and more importantly, authorizes the Authority to sell the byproducts of its
13 activities to any person. However, as stated in the Petition, the Authority is currently
14 negotiating with Florida Power & Light Company (“FPL”) for the sale and purchase of
15 the net electrical output of the Expanded Facility. It is my understanding that these
16 provisions of the Special Act, along with other facts and circumstances applicable to the
17 Authority, establish and define the Authority as a “proper applicant” for a need
18 determination under the Florida Electrical Power Plant Siting Act (PPSA).

19 **Q. Would you please generally describe the Authority’s activities?**

20 A. From its inception in 1975 through the early 1980’s, the Authority primarily focused on
21 organizational matters and planning the integrated solid waste management system. The
22 original Solid Waste Management Plan of the Authority was based on two WTE
23 facilities, to manage the waste generated in the County. The Authority took over

1 operation of all County landfills in 1983, and later implemented other components of the
2 solid waste system as described in the plan. This included the construction of the first
3 WTE facility in 1989, and the construction of new landfills that became commercially
4 operational in 1990.

5
6 The solid waste system currently includes a nominal 63 megawatt WTE facility (the
7 “Existing Facility”), which has generated electricity at the Authority’s Palm Beach
8 County site since 1989. The Existing Facility produces electricity by combustion or
9 incineration of MSW, capturing the heat of combustion in the form of high pressure
10 steam that in turn is converted into electricity by a nominal 63 megawatt capacity turbine-
11 generator set the net electrical output of which is sold to FPL as firm energy and capacity
12 pursuant to a long-term agreement.

13
14 The Authority is now in the process of expanding its WTE and electric generating
15 capacity by an additional amount of approximately 105 megawatts of electric generation
16 by MSW through the Expanded Facility. The Authority and FPL are currently engaged
17 in negotiations for the sale and purchase of the net electrical output of the Expanded
18 Facility at a price no greater than avoided cost. The parties hope to finalize an agreement
19 in January, 2011, which would then be submitted to the Commission. The Authority’s
20 decision to undertake the Expanded Facility came after much analysis, evaluation and
21 debate. It is not simply a matter of the Authority wanting to add the addition WTE
22 capacity – it is an absolute necessity that we do so if we are to carry out our mandate to
23 provide solid waste disposal capacity for the County.

24

1 The County’s population, as estimated by the University of Florida Bureau of Economic
 2 and Business Research, is roughly 1.3 million people and is projected to grow to 1.8
 3 million by 2035. About one-half of the population lives in the unincorporated area of the
 4 County, with the other one-half residing in the County’s 38 municipalities which include
 5 Palm Beach, West Palm Beach, Boca Raton, Jupiter, Lake Worth and Belle Glade. In
 6 fiscal year 2009, the most recent full year for which data is available, the Authority
 7 processed in the range of 1.8 million tons of MSW through its integrated solid waste
 8 management system. The Expanded Facility is an essential element of the Authority’s
 9 plan for managing the increasing amounts of solid waste that will accompany the
 10 County’s population growth.

11

12 **Q. Does the Authority own the resource recovery, waste management and other**
 13 **facilities located at the site?**

14 **A.** Yes. The Authority owns all of the facilities located at the site – including the Existing
 15 Facility – which were financed by Authority-issued revenue bonds. The Authority will
 16 similarly finance and own the Expanded Facility. The Authority is in the process of
 17 securing financing for the project by issuing roughly \$775 million dollars in debt in the
 18 next few weeks or months. The Authority reserves the right, on a case-by-case basis, to
 19 privatize the operation and maintenance of some of its facilities pursuant to long-term
 20 contracts, as is the case with the Existing facility and will be the case with the Expanded
 21 Facility. However, to be clear, the Authority owns all of the assets and infrastructure
 22 associated with its resource recovery, waste management and disposal facilities and
 23 operations.

24

1 **Q. Why is the Authority seeking a determination of need from the Commission?**

2 **A.** The Existing Facility was certified under the PPSA in 1984 for a maximum capacity of
3 75 megawatts. Because the Existing Facility is now and has been operating at its
4 maximum MSW disposal capability for the past several years, considerable quantities of
5 MSW must be landfilled, thus shortening the useful life of the landfill and precluding the
6 most efficient recovery of energy from that waste. The Authority requires additional
7 WTE capability to carry out its MSW processing and disposal obligations. To that end,
8 in 2006 the Authority commenced an expansion of our processing, disposal and recycling
9 infrastructure, including plans for the Expanded Facility. The Expanded Facility, which
10 is a critical component of Authority’s integrated waste management responsibilities and
11 operations, will produce a substantial amount of additional renewable electric generating
12 capacity when it begins commercial operation in 2015, as well as significantly extending
13 the life of the existing landfill.

14
15 Because the electrical generating capability of the Expanded Facility will exceed the 75
16 megawatt threshold of the PPSA, as well as the 75 megawatt maximum of the current site
17 certification, the Authority must request certification of the Expanded Facility from the
18 Florida Department of Environmental Protection (DEP). The Authority applied for a
19 modification to site certification on July 13, 2010, requesting the DEP to increase the
20 ultimate permitted electrical generating capacity at the site to 185 gross megawatts
21 maximum – an increase of 110 megawatts over the currently certified 75 megawatts. The
22 PPSA process, as administered by the DEP, requires an affirmation by the Commission
23 of the need for the increased electrical generating capacity of the Expanded Facility. As
24 noted in the Petition, the Authority has recently determined that at this juncture the

1 appropriate number for permitted electrical generating capacity at the site should be 168
2 gross megawatts rather than 185 megawatts. DEP has been advised of a reduction in
3 generating capacity by the Authority.

4
5 **Q. Would you please describe the importance of the WTE process to the Authority's**
6 **MSW disposal obligations?**

7 **A.** The Authority, as the sole entity responsible for MSW disposal in all of Palm Beach
8 County, copes with two basic realities: landfills are a limited and depletable resource, and
9 increases in MSW landfill disposal deplete them faster. Landfill capacity and landfill life
10 are the driving factor behind our MSW disposal planning and decision making. As Mr.
11 Pellowitz describes in more detail, we perform yearly analyses of our landfills and other
12 operations that helps us identify potentially critical points in time by which affirmative
13 action on the part of the Authority is required. After recycling, vegetation diversion and
14 composting, and other means of reducing the MSW stream, the remaining MSW is
15 disposed of via the volume-reducing WTE facility, with residual ash and any remaining
16 non-recyclable materials disposed of at landfill. The large volume reduction effect of
17 WTE greatly increases scarce landfill life.

18
19 WTE facilities and landfills thus are complementary parts of an integrated system of
20 MSW disposal, each serving a unique and necessary purpose. As Mr. Pellowitz will
21 discuss in his testimony, the Authority's system is designed and operated based on the
22 principles of integrated solid waste management that are consistent with, indeed required
23 by, the policies and goals of the State of Florida and the United States Environmental
24 Protection Agency. WTE reduces the volume of the MSW stream ultimately disposed of

1 at one of the Authority's landfills by approximately 90%. Accordingly, processing MSW
2 by WTE prior to landfilling substantially extends landfill life.

3
4 **Q. Is WTE processing of MSW consistent with Florida's policy regarding resource**
5 **recovery and management?**

6 **A.** Yes. The State of Florida has a long-standing commitment to recovering energy from
7 solid waste. Section 377.709(1), Florida Statutes, contains a specific Legislative
8 declaration in favor of combustion of MSW by WTE facilities to increase the state's
9 supply of electricity. Basically the Florida Legislature declared the combustion of refuse
10 by solid waste facilities to supplement the electricity supply not only represents an
11 effective conservation effort but also represents an environmentally preferred alternative
12 to conventional solid waste disposal in this state.

13
14 Moreover, in the mid-1970's, the Florida Legislature required DEP (then known as the
15 Department of Environmental Regulation, or "DER") to adopt rules for a state resource
16 recovery and management program. The resulting program was developed in 1976, and
17 established a Resource Recovery Council which recommended that 13 of the State's 67
18 counties – including Palm Beach County – submit local resource recovery management
19 programs that would include WTE processing where feasible. Palm Beach County
20 (through the Authority) and other Florida counties subsequently constructed WTE
21 facilities. Currently, WTE facilities are found in 10 Florida counties.

22
23 In addition, the Florida Legislature specifically acknowledged the benefits of energy
24 production from MSW in the Energy, Climate Change and Economic Security Act of

1 2008 (codified as § 403.7032, Florida Statutes), finding that the failure to economically
2 recover energy from solid waste results in unnecessary waste and resource depletion.
3 The statute set an ambitious goal, to be accomplished by 2020, of reducing disposal of
4 recyclable materials by 75% and specifically counts the solid waste used to produce
5 electrical energy toward this recycling goal. In fact, the DEP's "75% Recycling Goal
6 Report to the Legislature" estimates that Florida's WTE facilities could account for a
7 hefty 12% of Florida's total 75% recycling goal.

8
9 Importantly, the Authority's planning process for the Expanded Facility has been
10 conducted in a manner that encourages public input on the issues presented and the
11 alternatives considered for MSW processing and disposal in the region. For example, the
12 Authority advertised and held formal public hearings dedicated to MSW disposal on July
13 8, 2009 and June 22, 2010 where the public was invited and encouraged to specifically
14 address issues or concerns. In addition to those dedicated hearings, the Authority's
15 Board has held numerous noticed public meeting and workshops where the issue was the
16 major focus – including meetings/workshops on October 22, 2008; June 10, 2009; August
17 26, 2009; November 18, 2009; January 27, 2010; February 16, 2010; and May 18, 2010.

18
19 **Q. Please provide a brief general description of the Authority's MSW processing.**

20 **A.** Once at the site, MSW undergoes processing to separate recyclable materials (primarily
21 ferrous metal and aluminum) from non-recyclable materials. The remaining non-
22 recyclable materials are further processed into a material known as refuse-derived fuel,
23 which is fired in steam boilers to produce steam for use in a utility-class steam turbine-
24 generator with a nominal rating of 63 megawatts. The Authority's Existing Facility

1 generates approximately 400,000 net megawatt-hours of electricity annually from MSW
2 that is delivered to and sold to FPL.

3
4 In addition to WTE, the Authority utilizes many other processes and operations in
5 fulfilling its obligation to provide “integrated” resource management throughout the
6 County. Speaking generally, we have initiated a project to utilize landfill gas as a
7 replacement for natural gas to treat and process wastewater treatment sludge at the site.
8 We also operate other facilities including residential and commercial materials recycling,
9 composting, landfills, ferrous metals processing, woody waste recycling, and transfer
10 stations. Mr. Pellowitz’s direct testimony provides greater detail regarding these
11 functions.

12
13 **Q. Does the Authority need the Expanded Facility in order to meet its MSW processing**
14 **and disposal obligations?**

15 **A.** Yes, definitely. The Expanded Facility is necessary to maintain the proper balance and
16 diversity of processing and disposal that is inherent in integrated solid waste programs.
17 Without the Expanded Facility, the Authority runs the very real risk of being unable –
18 within a relatively short time – to meet its MSW processing and disposal obligations to
19 the detriment of the Citizens of Palm Beach County and the State as a whole. As Mr.
20 Pellowitz discusses, the Expanded Facility will restore balance to the Authority’s solid
21 waste program and in the process substantially increase the useful life span of the
22 Authority’s depletable landfill space. The Expanded Facility is a crucial part of a
23 diversified and integrated program for the management of MSW and other solid wastes,
24 and will provide a proven, substantial and reliable supply of much-needed renewable

1 energy produced from MSW, thereby displacing significant amounts of electricity that
2 would otherwise be generated by utility generating plants operating on natural gas or
3 other fossil fuels.

4
5 **Q Has the Authority considered alternatives to the Expanded Facility?**

6 **A.** Yes, we have. As I mentioned earlier, the Authority conducts yearly in-depth analyses of
7 our landfills and associated operations that helps us identify potentially critical points in
8 time by which affirmative action on the part of the Authority is required. After recycling,
9 vegetation diversion and composting and other means of reducing the MSW stream, the
10 Authority has determined that the best available option or alternative for addressing
11 MSW processing and disposal deficiencies is to add the Expanded Facility. While Mr.
12 Pellowitz will describe the alternatives considered by the Authority in greater detail, I can
13 state that the Authority considered alternatives to the Expanded Facility including
14 increased recycling, increased landfill disposal, incineration without energy recovery and
15 exporting MSW to third parties. We determined that none of these alternatives were
16 viable, preferable, prudent or in the best interest of the citizens of the County when
17 compared to the Expanded Facility.

18
19 **Q. Would delay in adding the Expanded Facility result in any adverse consequences?**

20 **A.** Yes, it would. Delaying the Expanded Facility would have significant adverse impacts
21 on the Authority's ability to dispose of MSW, to comply with its legal obligations to
22 dispose of MSW, to add a much-needed source of renewable energy to Florida's electric
23 utility fuel mix, and would deprive the local economy of hundreds of millions of dollars
24 of investment in plant and equipment and the hiring of hundreds of worker to construct

1 and operate the Expanded Facility. The Expanded Facility is a crucial component of the
2 Authority's integrated resource management program that is well planned, cost effective
3 and environmentally beneficial. Without the Expanded Facility, an excessive amount of
4 MSW will be diverted to landfills with negative environmental and cost consequences.

5
6 In addition, the useful life of Authority's landfills will be substantially and unnecessarily
7 reduced to the detriment of the citizens of the County and the environment as a whole.
8 This is significant because solid waste disposal capacity is identified as a component of
9 infrastructure required for concurrency management by the Department of Community
10 Affairs in Rule 9J-5.005(4). If the Authority fails to provide adequate capacity for waste
11 disposal, it negatively impacts the concurrency status and comprehensive plans of all 38
12 municipalities and the county.

13
14 Further, if the Expanded Facility is delayed, the Authority and citizens of Palm Beach
15 County will be forced to site, finance and implement less reliable, less desirable and less
16 environmentally friendly means of MSW processing and disposal in contravention of the
17 State solid waste disposal policy and the specific responsibilities of the Authority. The
18 State and its citizens would be forced to accept the negative consequences of disposing of
19 MSW via landfill where it will consume valuable real estate, will decompose to release
20 methane gas – a significant green house gas – and potentially result in other negative
21 impacts. For example, the citizens within the area covered by the Authority will be
22 unnecessarily burdened with substantial additional collection costs that would otherwise
23 be reduced or mitigated by revenues from the sale or use of electricity produced by the

1 Expanded Facility. Mr. Pellowitz and Mr. Hartman will offer some further testimony on
2 the adverse consequences of delay.

3

4 **Q. Would you provide the projected major milestone dates including the start up and**
5 **commercial operation of the Expanded Facility?**

6 A. The Authority's current planning schedule is based on the timely achievement of the
7 following major milestones:

- 8 ● FPSC Order Determining Need April 30th, 2011
- 9 ● Site Certification Issued 3rd Quarter 2011
- 10 ● Begin Site Preparation 1st Quarter 2012
- 11 ● Begin Facility Construction 3rd Quarter 2012
- 12 ● Delivery of Turbine Generator 3rd Quarter 2013
- 13 ● Mechanical Completion 3rd Quarter 2014
- 14 ● Start Up and Testing 4th Quarter 2014
- 15 ● Acceptance Testing 2nd Quarter 2015
- 16 ● Commercial Operation 4th Quarter 2015

17

18 **Q. Does this conclude your direct testimony?**

19 A. Yes it does.

1 BY MR. ZAMBO:

2 Q Would you please summarize your testimony?

3 A Good morning.

4 CHAIRMAN GRAHAM: Good morning.

5 THE WITNESS: My testimony provides background
6 information and support for the Authority's petition for
7 the modification of its existing need determination for
8 the approval of the proposed power -- and the approval of
9 the proposed power purchase agreement from Florida -- with
10 Florida Power & Light.

11 I focus on the Authority's important obligations
12 and responsibilities as a creation of the Legislature, a
13 political subdivision of Palm Beach County, and as the
14 sole governmental entity within Palm Beach County
15 empowered to manage, dispose of and recover energy from
16 solid waste for the people of Palm Beach County.

17 Further, I describe the importance of the
18 Authority's request for a determination of need for the
19 addition of approximately 90 megawatts of electric
20 generation fueled by municipal solid waste, the expanded
21 facility in this case. I also describe the Authority's
22 operations, programs and ongoing activities, including
23 expansion of electrical generating capacity at our Palm
24 Beach County site.

25 The Authority is a local governmental entity

1 that is a political subdivision of Palm Beach County.
2 More specifically, the Authority is a dependent special
3 district created by a Special Act of the Florida
4 Legislature in 1975, the Special Act. This Special Act
5 requires the Authority to adopt a comprehensive resource
6 recovery and waste management program to transport, store,
7 separate, process, recover, recycle and ultimately dispose
8 of Palm Beach County's solid waste. Accordingly, by
9 virtue of the Special Act, the Authority provides solid
10 waste processing, disposal and recycling services
11 throughout all of the unincorporated and incorporated
12 areas of Palm Beach County, and in addition we also
13 collect solid waste in the unincorporated area. The
14 Authority is specifically required to engage in recycling
15 and resource recovery. As defined in the Special Act,
16 these terms include the use of solid waste as an energy
17 source.

18 The Authority is well into the process of
19 expanding its waste-to-energy capacity with the addition
20 of the approximately 90 megawatts of electrical generation
21 through the combustion of MSW in the expanded facility.

22 To that end, the Authority and FPL have
23 negotiated the proposed power purchase agreement for the
24 sale and purchase of the net electrical output of the
25 expanded facility that has been filed in this proceeding

1 for the Commission's approval.

2 Additionally, on April 13th of 2011, just two
3 weeks ago, the Authority and the B&W Power Generation
4 Group, Incorporated, entered into a contract for the
5 design, construction and operation of the expanded
6 facility by the second quarter of 2015. The Authority's
7 decision to undertake the expanded facility came after
8 much analysis, evaluation, debate and discussion at
9 numerous public meetings and workshops. It is not simply
10 a matter of the Authority wanting to add the additional
11 waste-to-energy capacity, it is critical that we do so if
12 we are to fulfill our legislative mandate to provide
13 effective solid waste disposal practices and solid waste
14 management for the county.

15 Because the electrical generating capability of
16 the expanded facility will exceed the 75-megawatt
17 threshold of the Power Plant Siting Act as well as the
18 75-megawatt maximum of the current site certification, the
19 Authority is required to request certification of the
20 expanded facility from the Florida Department of
21 Environmental Protection under the Power Plant Siting Act.
22 The Authority has applied to DEP for a modification to its
23 existing site certification. The PPSA process as
24 administered by the Department of Environmental Protection
25 requires a determination by this Commission of the need

1 for the increased electrical generating capacity of the
2 expanding facility.

3 The State of Florida has a longstanding
4 commitment to recover energy from solid waste. Section
5 377.709, *Florida Statutes*, contains a specific legislative
6 declaration in favor of the combustion of municipal solid
7 waste by waste-to-energy facilities to increase the
8 State's supply of electricity.

9 The Florida Legislature essentially declared
10 that the combustion of refuse by solid waste facilities to
11 supplement the electrical supply not only represents an
12 effective conservation effort, but also represents an
13 environmentally preferred alternative to the conventional
14 disposal of solid waste in landfills. The expanded
15 facility is necessary to maintain the proper balance and
16 diversity of processing and disposal that is fundamental
17 to providing an effective integrated solid waste
18 management program for our customers in Palm Beach County.

19 Without the expanded facility, the Authority
20 runs the very real risk of being unable, within a
21 relatively short time frame, to meet its solid waste
22 processing and disposal obligations to the detriment of
23 the citizens of Palm Beach County and potentially the
24 state as a whole.

25 Delaying the expanded facility would have

1 significant adverse impacts on the Authority's ability to
2 dispose of MSW effectively and to comply with our
3 statutory obligations. Delaying the facility is also a
4 failure to add a much needed source of renewable energy to
5 Florida's electric utility fuel mix and furthermore would
6 deprive the local economy of hundreds of millions of
7 dollars of investment in plant and equipment and the
8 hiring of hundreds of workers to construct and operate the
9 expanded facility.

10 The expanded facility is a crucial component of
11 the Authority's integrated solid waste management program,
12 a program that is well planned, cost-effective and
13 environmentally beneficial. Without the expanded
14 facility, up to 3,000 tons a day of municipal solid waste
15 will be sent to landfills with negative economic and
16 environmental consequences.

17 My testimony points out the importance of
18 receiving a favorable decision by the Commission granting
19 the requested modification to the existing determination
20 of need and approving the proposed power purchase
21 agreement with Florida Power & Light. Without this
22 approval we cannot proceed with the Power Plant Siting Act
23 certification and the entire project will be delayed.
24 Thank you.

25 **CHAIRMAN GRAHAM:** Thank you, sir.

1 MR. ZAMBO: Thank you, Mr. Bruner. I tender the
2 witness for cross-examination.

3 CHAIRMAN GRAHAM: Thank you.

4 Ms. Larson.

5 MS. LARSON: I just have a few questions.

6 CHAIRMAN GRAHAM: Sure.

7 CROSS EXAMINATION

8 BY MS. LARSON:

9 Q Sorry, Mr. Bruner. You're way down there.

10 A Yeah. I can see you. Thank you.

11 Q Okay. Mr. Bruner, I have a few questions for
12 you today. I'll wave down there.

13 Have you reviewed the SWA, the Solid Waste
14 Authority response to Staff interrogatory 25F? I have a
15 copy, if you need it.

16 A Yes, I have. If you'll give me a moment, I can
17 actually go directly to it.

18 Q I have, I have a copy, if you need one.

19 A Yes, ma'am. I have it in front of me.

20 Q You would agree that the Solid Waste Authority
21 response to Staff interrogatory 25F stated that the cost
22 of design for the electrical component of the Solid Waste
23 Authority expanded facility is only \$1.65 million;
24 correct?

25 A No, ma'am. I believe that number has, has been

1 adjusted based on the lump sum bid that we got from B&W
2 Power Generation Group to an amount of \$3,298,844.

3 Q You would agree that the one point -- bear with
4 me, Mr. Bruner. You would agree that the \$1.6 million
5 amount is substantially less than the \$60 million that FPL
6 expects its ratepayers to pay in an advanced capacity
7 payment equal to the full cost of the power block?

8 A Yes, they are two different numbers.

9 Q Did Solid Waste Authority staff represent to the
10 Solid Waste Authority board the advanced capacity payment
11 would be approximately \$36 million during the Solid Waste
12 Authority board meeting held on February 9, 2011?

13 A No. We did not represent that that was the
14 number that was provided as an estimate.

15 MS. LARSON: No further questions.

16 CHAIRMAN GRAHAM: Thank you, Ms. Larson.

17 Staff.

18 **CROSS EXAMINATION**

19 **BY MR. MURPHY:**

20 Q Mr. Bruner, I'm Charlie Murphy for Commission
21 Staff. I'd like to take a moment to go through the Staff
22 exhibits, and we'll bring a copy of them over to you.

23 A Thank you.

24 Q Are you familiar with hearing Exhibit Number 2,
25 which is a composite exhibit consisting of various SWA

1 responses to Commission Staff interrogatories and requests
2 for productions of documents?

3 A Yes.

4 Q How are you familiar with them?

5 A These are responses that I either prepared or
6 provided as I can, as I, as I review this document in
7 front of me. This is, this is document number 2 that
8 we're talking about here; right?

9 Q Yes, sir.

10 A Yes. Yeah. These are, these are documents that
11 I either, that I prepared or provided.

12 Q Okay. And are you also familiar with hearing
13 Exhibit 8, which is a composite existing of SWA
14 supplemental responses to Staff discovery?

15 A Yes, I am.

16 Q And how are you familiar with that?

17 A Again I prepared and/or provided those
18 materials.

19 Q And I don't believe we've just given you another
20 copy of it, but are you also familiar with hearing
21 Exhibit 4, which is a transcript of your deposition that
22 you had with Mr. Pellowitz in this case?

23 A Yes, I am.

24 Q And did you have an opportunity to review that?

25 A Yes, I have.

1 Q Okay. Is the information in these exhibits
2 related to your prefiled testimony in this case?

3 A Yes.

4 Q Can you describe briefly how?

5 A I believe that these were, these were
6 interrogatories and responses that arose out of those, of
7 that prefiled testimony and also arose out of requests for
8 documents to support that testimony.

9 Q In general terms, do they provide data related
10 to the case?

11 A Yes, they do.

12 Q Do they provide an overview of the case?

13 A Yes, they do.

14 Q And do they provide background or context for
15 the case?

16 A Yes, they do.

17 Q With the understanding that the information has
18 become more specific over time, does the information in
19 these exhibits as updated reflect the position of SWA in
20 this case?

21 A Yes, it does.

22 Q Thank you. Is it your testimony that SWA's
23 responsibility, that it's SWA's responsibility to dispose
24 of solid waste?

25 A Yes.

1 Q And you've chosen to burn this and convert it
2 into electricity?

3 A Yes.

4 Q And this electricity would be sold to FPL?

5 A Yes.

6 Q Understanding that you're not an attorney, I'd
7 like to ask you a few general questions about why we're
8 here today.

9 Does Section 377.709(3), *Florida Statutes*,
10 provide a funding mechanism which allows FPL to pay in
11 advance the cost of the electrical component used by SWA
12 to convert solid waste into electricity?

13 A Yes, it does.

14 Q And it is your -- is it your understanding that
15 this advanced funding contract entered into between SWA
16 and FPL must be approved by the Commission?

17 A Yes, it is.

18 Q And with the concurrence of FPL and SWA is the
19 Commission also authorized to modify the contract?

20 A I believe so, yes.

21 Q As part of the advanced payment program is FPL
22 permitted to recover the amount of financing for the
23 electrical component from its ratepayers?

24 A Yes, it is.

25 Q What is the cost of the electrical component?

1 A The number that I believe we have in our
2 information is \$56,643,942.

3 Q Is that a firm amount or could the cost of the
4 electrical component increase?

5 A That is a firm amount.

6 Q Is 60.3 million the approximate net present
7 value of the revenue stream to SWA under the proposed
8 contract?

9 A I believe so, yes.

10 Q If SWA entered into a standard offer contract,
11 would the net present value of the revenue stream be
12 approximately 98.8 million?

13 A I believe so, yes.

14 Q Despite the savings for FPL customers, was this
15 still the best alternative for SWA?

16 A Yes, it was.

17 Q Could you explain why?

18 A The -- there are really several advantages to
19 the advanced capacity payment, and it also goes back to
20 some of the issues in the negotiations with Florida Power
21 & Light when we began the negotiations.

22 When we initiated them, the standard offer
23 contract did not look as effective for the Solid Waste
24 Authority. The advanced capacity payment was a, was a
25 better option for us. The payment of the advanced

1 capacity payment and the timing of it again as an advanced
2 payment allows us to avoid going out for a separate
3 taxable bond issue to fund the acquisition of the power
4 generation component because that, that is not tax -- that
5 is not allowed to be financed by tax-free financing. So
6 the combination of factors and the result of the
7 negotiation, it turned out to still be an effective offer
8 and an effective deal for the Solid Waste Authority.

9 Q Thank you. Are you aware of any prior case at
10 the Commission involving the advanced funding program?

11 A No, I am not.

12 Q So this is a case of first impression?

13 A As I understand the legal term, yes.

14 MR. MURPHY: Yes. That's all I have, Mr.
15 Chairman. I ask that hearing Exhibits 2 and 8 be included
16 in the record. I believe that Ms. Larson may have a
17 question about one of those, or maybe both.

18 CHAIRMAN GRAHAM: Okay. We've entered the
19 Composite Exhibit List -- I'm sorry. The Comprehensive
20 Exhibit List, we entered that as Exhibit 1. You want to
21 enter Exhibit 2. And Exhibit 2, is there a short title
22 for that? Is that -- what did you call it?

23 MR. MURPHY: It's Staff's Composite Number 1.

24 CHAIRMAN GRAHAM: Okay. Staff's Composite
25 Number 1 is going to be entered as Exhibit 2.

1 (Exhibit 2 marked for identification and
2 admitted into evidence.)

3 And what was the other one that you wanted?

4 **MR. MURPHY:** Exhibit 8. And Exhibit 8 is Staff
5 Composite Number 4.

6 **CHAIRMAN GRAHAM:** Staff Composite Number 4. All
7 right. Now Ms. Larson had a question about that.

8 **MS. LARSON:** It's just the fact that in the, in
9 the scheme of things we've answered these questions.
10 It's, it's been a progressive, we've gone from A through
11 G, A through F. I joked with Charles about we should just
12 go to Z with the answers. So I, I do, I do move to strike
13 some of the interrogatories here. And it's -- and in
14 number 8 they list 10, 23C, 25F and 25G.

15 **CHAIRMAN GRAHAM:** You wish to strike 10, 23C,
16 25F and 25G?

17 **MS. LARSON:** Uh-huh. Or, you know, at least
18 stand that they're -- I question the fact that the
19 interrogatories -- it's been progressive. We keep
20 answering them over and over again in different ways,
21 several different ways.

22 **CHAIRMAN GRAHAM:** Mary Anne.

23 **MS. HELTON:** Mr. Chairman, before I speak, maybe
24 we could hear from the company that responded to the
25 interrogatories and hear Staff's take on why they want the

1 exhibits in the record so we'll have a, have it fully
2 developed, and then if I could make a recommendation after
3 that.

4 **CHAIRMAN GRAHAM:** Sure.

5 **MS. RULE:** Commissioners, this is Marsha Rule.

6 **CHAIRMAN GRAHAM:** Yes.

7 **MS. RULE:** First of all, I would note that
8 Ms. Larson has not stated any legal objection to the
9 admission of any of the discovery. It's certainly within
10 the Commission's authority to take this. It's -- part of
11 it has already been testified to by Mr. Bruner, so it's
12 already in the record.

13 And as a practical matter, we could sit here all
14 day and ask these very same questions of every witness.
15 This is a good savings of time for the Commission as well
16 as for the parties.

17 I believe part of Ms. Larson's objection,
18 particularly with regard to Staff Composite Exhibit Number
19 4, which is hearing ID number 8, is because they're
20 supplements. And as Mr. Bruner testified, we just signed
21 a contract less than two weeks ago that firmed up some of
22 these numbers, and clearly we want to bring you the most
23 firm and recent information as possible.

24 If you accept Ms. Larson's objection, what
25 you're dealing with is what was presented to you as

1 preliminary numbers. This is not, as Ms. Larson has said,
2 a moving target. This is the statute working exactly as
3 it should. We are bringing you our construction costs
4 preconstruction as soon as we can, and that's what the
5 statute requires. And, accordingly, in order to give you
6 the most information in your record, we ask that this
7 information come into the record.

8 **CHAIRMAN GRAHAM:** If I may, so, just so I can
9 understand, Ms. Larson, your complaint is that these
10 numbers seem like they're continually changing and it's
11 just such a moving target.

12 And what I'm hearing you saying is as we get
13 closer and closer to this hearing the numbers are getting
14 more and more fine-tuned, and you're saying that these are
15 the best, the best numbers to date.

16 **MS. RULE:** Yes, sir.

17 **CHAIRMAN GRAHAM:** Okay. Is that clear,
18 Ms. Larson?

19 **MS. LARSON:** Well, I, I guess I just want to
20 explain to the Commission as a ratepayer and a taxpayer
21 what I've witnessed in Palm Beach County on a regular
22 basis. We have a thing at every County Commission meeting
23 called a change order. And, believe me, I guess my fears
24 are derived from reading eight years of change orders in
25 Palm Beach County. Because every -- I guess the reason I,

1 I guess the reason I use the word "moving target" is when
2 I come into a County Commission meeting or a Solid Waste
3 Authority meeting -- because our Commissioners are the
4 same, our County Commissioners are our Solid Waste
5 Authority board -- and you'll, you know, you open up an
6 agenda and it'll be change order number 38.

7 So here is a taxpayer who's a ratepayer. If I
8 come in, you know, a year from now, we're in the middle of
9 this construction and it doubles in price, there's where
10 my fear lies. I'm just trying to explain to you where
11 this comes from, and it comes from the heart because
12 that's what happens in Palm Beach County. They're called
13 change orders and they're tremendous.

14 **CHAIRMAN GRAHAM:** All right. But I guess what
15 Ms. Rule is saying is that these are the best numbers that
16 they have to date. And I guess for the sake of this
17 hearing we want to put into the record the correct numbers
18 and not numbers that we know not to be correct. So you're
19 fine now with Exhibit 4 or the Staff Composite Exhibit 4?

20 **MS. LARSON:** Well, number 4 is the -- isn't
21 number 4 the deposition transcript?

22 **CHAIRMAN GRAHAM:** Yes.

23 **MS. LARSON:** I'm not fine with number 4 because
24 I --

25 **MR. MURPHY:** Commissioner?

1 **CHAIRMAN GRAHAM:** Yes.

2 **MR. MURPHY:** There are two sets of numbers.

3 **MS. LARSON:** I'm sorry.

4 **MR. MURPHY:** And she's talking about hearing ID
5 4 as opposed to Staff Composite 4.

6 **CHAIRMAN GRAHAM:** No. We're talking about --
7 and, Ma'am, I don't know if you have the summary that we
8 have. Yeah. It's on page 5 of the summary at the top of
9 the page, Staff Composite Exhibit 4.

10 **MS. LARSON:** Okay. I have page 2. This is what
11 I have.

12 **CHAIRMAN GRAHAM:** All right. Now we're looking
13 at two different sets of numbers. The 4 that you're
14 looking at --

15 **MS. LARSON:** Is the depositions.

16 **CHAIRMAN GRAHAM:** -- is the depositions. No.
17 We're at the top of page 5, which is hearing ID Number 8,
18 Staff Composite Exhibit 4, and have those interrogatories,
19 interrogatories that you were speaking of earlier.

20 **MS. LARSON:** Am I looking at a different piece
21 of paper, Charles? I'm -- where am I --

22 **MR. MURPHY:** If I could clarify. We did have
23 him acknowledge the deposition transcript. Because it was
24 a panel, we will not move that in until after the next
25 witness.

1 **CHAIRMAN GRAHAM:** Yes.

2 **MR. MURPHY:** And here we're looking at hearing
3 Exhibit 8, which is Staff's Composite 4, and hearing
4 Exhibit 2, which is the Composite Exhibit 1.

5 **MS. LARSON:** I found it.

6 **CHAIRMAN GRAHAM:** Okay.

7 **MS. LARSON:** Thank you.

8 **CHAIRMAN GRAHAM:** Okay. Are, are you okay with
9 that then?

10 **MS. LARSON:** I'm still not okay with it, but
11 obviously you want to put it in.

12 **CHAIRMAN GRAHAM:** Yeah. I guess I'm going to
13 have to overrule your objection because I, I understand
14 where they're coming from on this. I just wanted to make
15 sure that we're clear.

16 Okay. Okay. So we've moved in, we've moved in
17 Staff Composite Exhibit 1, which is going to be Exhibit
18 Number 2 for us, and we moved in Staff Composite Exhibit
19 4, which we're going to label as Exhibit 3 [sic]. Are we
20 all on board with that so far?

21 **MR. MURPHY:** I believe that's hearing Exhibit 8.

22 **CHAIRMAN GRAHAM:** I'm sorry, 8. Sorry. Go
23 ahead.

24 (Exhibit 8 marked for identification and
25 admitted into evidence.)

1 **MR. MURPHY:** Okay. With -- thank you. So we've
2 moved 2 and 8 into the record, and we will address hearing
3 Exhibit 4 with the next witness. Thank you.

4 **CHAIRMAN GRAHAM:** So we are done. Is there
5 redirect for Mr. Bruner? The witness is excused. Thank
6 you, sir.

7 **MR. ZAMBO:** Chairman Graham, I'd like to request
8 that Mr. Bruner's testimony be inserted into the record as
9 if read.

10 **CHAIRMAN GRAHAM:** We will have it inserted into
11 the record as if read. Thank you.

12 (REPORTER'S NOTE: For ease of the record, the
13 prefiled testimony of Marc C. Bruner was inserted into the
14 record at Page 24.)

15 **MS. HELTON:** And, Mr. Chairman -- over here. I
16 didn't hear you, and it may be that I just wasn't fully
17 there, but I didn't hear you move in hearing Exhibit
18 Number 1.

19 **CHAIRMAN GRAHAM:** Yes.

20 **MS. HELTON:** You did?

21 **CHAIRMAN GRAHAM:** Yes.

22 **MS. HELTON:** Okay.

23 **CHAIRMAN GRAHAM:** I actually did it twice just
24 in case I forgot it the first time.

25 **MS. HELTON:** Okay. I somehow managed to missed

1 both times. Sorry about that.

2 CHAIRMAN GRAHAM: I think I may have missed the
3 first time.

4 All right, our second witness.

5 Let the record show that Mr. Pellowitz has
6 already been sworn.

7 DANIEL J. PELLOWITZ

8 was called as a witness on behalf of the Solid Waste
9 Authority of Palm Beach County and, having been duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ZAMBO:

13 Q Mr. Pellowitz, would you state your name and
14 address for the record, please?

15 A My name is Daniel Pellowitz. I live at
16 10250 Allamanda Circle in Palm Beach Gardens, Florida
17 33410.

18 Q And did you prepare or have prepared under your
19 direction for filing in this proceeding a document
20 entitled Direct Testimony of Daniel J. Pellowitz on behalf
21 of The Solid Waste Authority of Palm Beach County?

22 A Yes, I did.

23 Q And did you also prepare or have prepared under
24 your direction an Exhibit DJP-1 to your testimony?

25 A Yes, I did.

1 Q Do you have any changes or corrections that
2 you'd like to make to your testimony?

3 A I have one change to page 20 of 20 my testimony.

4 **MR. ZAMBO:** Chairman Graham, we have copies of
5 that change that replaces one page of his testimony that
6 we'll pass out.

7 **THE WITNESS:** Would you like me to read it?

8 **BY MR. ZAMBO:**

9 Q Yes, please. Would you read that into the
10 record?

11 A Yes. Following the phrase, "which includes the
12 generator, turbine, and related transmission facilities,"
13 I have inserted the following. "Tax regulations prohibit
14 SWA from financing the electrical generation component of
15 a solid waste disposal facility with tax exempt debt, so
16 the advanced capacity payment is intended to and will fund
17 the \$56,643,942 budgeted cost of the expanded facility's
18 electrical component."

19 Q Thank you. With that change, if I were to ask
20 you the same questions that are contained in your direct
21 testimony, would your answers be the same?

22 A Yes.

23 Q Please summarize your testimony.

24 **COMMISSIONER EDGAR:** Excuse me, Mr. Zambo.

25 **CHAIRMAN GRAHAM:** Yes.

1 **COMMISSIONER EDGAR:** Excuse me, Mr. Chairman.

2 Thank you.

3 Before you go to the summary, can I get a copy
4 of the addition to the prefiled testimony that he's just
5 read?

6 **MS. RULE:** We've provided it to Staff for you.

7 **COMMISSIONER EDGAR:** Okay. Could you -- if you
8 could just slow down for me a moment. I'd like to have
9 that in front of me.

10 Thank you, Mr. Chairman. I apologize for
11 interrupting. Mr. Zambo just was moving a little faster
12 than I was there.

13 **MR. ZAMBO:** I'm sorry. I apologize for not
14 getting a copy in your hands immediately.

15 **BY MR. ZAMBO:**

16 **Q** Mr. Pellowitz, would you summarize your
17 testimony?

18 **A** Yes. Good morning. My testimony describes how
19 the Authority's programs are designed to integrate solid
20 waste transportation, processing, recycling, resource
21 recovery and disposal technologies, while protecting the
22 environment, achieving a 50 percent recycling and waste
23 reduction goal, and educating the public about solid waste
24 management issues. In a nutshell, we strive to recycle
25 what we can, burn what we can't recycle, and landfill as

1 little as possible.

2 Because the existing waste-to-energy facility is
3 operating at full capacity and has been doing so for some
4 years, we are unable to adhere to these goals and must
5 rely too heavily on landfilling.

6 I am responsible, among other things, for
7 assisting the Authority's executive director in the
8 administration and management of the Authority, providing
9 guidance in the development and implementation of
10 authority projects, coordinating interdepartmental
11 activities, leading, developing and presenting financial
12 and strategic analyses of solid waste management and
13 recycling alternatives, and reviewing and commenting on
14 issues which may affect Authority functions.

15 I have developed and/or updated numerous models,
16 plans and studies, including the integrated solid waste
17 management plan. I have performed dozens of financial
18 feasibility studies covering all aspects of the
19 Authority's integrated solid waste management system,
20 including collection, transportation, recycling,
21 composting, landfilling, waste-to-energy, and overall
22 system financing.

23 My responsibilities include the monitoring,
24 analysis, modification and updating as and when
25 appropriate of the Authority's programs for dealing with

1 MSW processing and disposal, and planning for the changing
2 MSW needs of the Authority in this dynamic process.

3 My testimony addresses the Authority's
4 integrated solid waste management system, as well as
5 current and planned waste management programs, plans and
6 objectives. I describe the current MSW management
7 facilities and operations of the Authority with a focus on
8 the Authority's long-range planning and its recent
9 decision to substantially increase its waste-to-energy
10 capabilities.

11 After years of carefully and thoroughly
12 reviewing, evaluating and analyzing commercially available
13 options, the Authority has determined that the addition of
14 the expanded facility is crucial to and is the only option
15 capable of ensuring the continued success of its overall
16 resource recovery and solid waste management operations in
17 a manner consistent with our goals and objectives.

18 My testimony demonstrates that the Authority
19 must add the expanded facility to its operations no later
20 than 2015 in order to continue to meet its legislatively
21 imposed legal obligations to process and dispose of solid
22 waste in Palm Beach County in an effective, efficient and
23 environmentally responsible manner and to preserve
24 valuable landfill space.

25 Finally, I address the traditional funding

1 mechanisms available to the Authority to support and carry
2 out its integrated solid waste management plans and point
3 out the importance of the advanced capacity payment to the
4 Authority's funding of the expanded facility. Because we
5 as a unit of local government are prohibited by the IRS
6 tax regulations from using tax-free financing to fund the
7 electrical component of the expanded facility, the
8 advanced capacity payment will be of significant benefit
9 to the Authority, while providing electrical generating
10 capacity to FPL over the term of the power purchase
11 agreement at a cost less than FPL's avoided cost. Thank
12 you.

13 **MR. ZAMBO:** Thank you, Mr. Pellowitz. I ask
14 that Mr. Pellowitz's direct testimony and exhibit be moved
15 into the record as though read.

16 **CHAIRMAN GRAHAM:** Let it be moved into the
17 record as though read.

18 **MR. MURPHY:** Commissioner, his -- Mr. Chair.

19 **CHAIRMAN GRAHAM:** Yes.

20 **MR. MURPHY:** His exhibit is number 12 on your
21 list, just for clarification.

22 (Exhibit 12 marked for identification.)
23
24
25

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2
3 **DIRECT TESTIMONY**

4 **OF**

5 **DANIEL J. PELLOWITZ**

6 **ON BEHALF OF**

7 **THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY**

8 **IN RE:**

9 **MODIFICATION TO DETERMINATION OF NEED**

10
11 **Q. Would you please state your name, occupation and business address?**

12 A. My name is Daniel J. Pellowitz. I'm the Assistant to the Executive Director of the Solid
13 Waste Authority of Palm Beach County, with offices at 7501 North Jog Road, West Palm
14 Beach, Florida 33412 (the "Authority").

15
16 **Q. Briefly, what is your educational background and experience?**

17 A. I hold a BS degree in Quantitative Business Analysis from Penn State University. I also
18 hold an MBA from Florida Atlantic University. I have over 20 years of financial,
19 analytical, strategic planning and managerial experience including over 19 years with the
20 Authority, one of the largest and most successful integrated solid waste management
21 systems in the nation.

22
23 I am responsible for assisting the Authority's Executive Director in administration and
24 management matters; acting on his behalf in his absence; providing guidance in the
25 development and implementation of Authority projects; coordinating interdepartmental
26 activities; leading, developing and presenting financial and strategic analyses of solid

1 waste management and recycling alternatives; and reviewing and commenting on issues
2 which may affect Authority functions. I have developed and/or updated numerous
3 models, plans and studies including the Integrated Solid Waste Management Plan. I have
4 performed dozens of financial feasibility studies covering all aspects of the Authority's
5 Integrated Solid Waste Management System including collection, transportation,
6 recycling, composting, landfilling, waste-to-energy and overall system financing. My
7 responsibilities include the monitoring, analysis, modification and updating as and when
8 appropriate of the Authority's programs for dealing with MSW processing and disposal
9 and planning for the changing MSW needs of the Authority in this dynamic process.

10

11 For the past 15 years I have been principally responsible for the Authority's waste
12 forecasting and landfill life projections which form the foundation of the Authority's
13 planning activities. More specifically, I performed the economic analyses leading to the
14 decision to increase waste-to-energy processing capacity as the most cost effective,
15 environmentally sound and fiscally responsible alternative available to meet the
16 Authority's waste processing and disposal obligations.

17

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

19 **A.** I am presenting this testimony on behalf of my employer, the Solid Waste Authority of
20 Palm Beach County, Florida.

21

22 **Q. What is the purpose of your testimony?**

23 **A.** I support the Authority's petition for modification of its prior need determination (the
24 "Petition"). My testimony will describe the Authority's current and planned waste

1 management programs and will discuss the Authority’s planning and implementation of a
2 critical expansion of its waste-to-energy (“WTE”) capability as part of our overall
3 resource recovery and waste management operations. The Authority is well along in the
4 process of expanding its WTE and electric generating capacity by an additional amount
5 of approximately 93 megawatts of electric generation by MSW (the “Expanded
6 Facility”). My testimony demonstrates that the Authority must add the WTE component
7 of the Expanded Facility to its operations no later than 2015 in order to continue to meet
8 its legal obligation to process and dispose of solid waste in Palm Beach County in an
9 environmentally responsible manner.

10

11 **Q. Would you please describe the Authority’s goals and operating principles?**

12 **A.** The Authority’s system is designed and operated based on the principles of integrated
13 solid waste management. We strive to meet or to exceed the policies and goals of the
14 State of Florida and the United States Environmental Protection Agency (“EPA”) with
15 respect to resource recovery and solid waste management. The Authority’s programs are
16 designed to integrate solid waste transportation, processing, recycling, resource recovery
17 and disposal technologies while protecting the environment, achieving a 50% recycling
18 and waste reduction goal, and educating the public about solid waste management issues.
19 In other words, we strive to recycle what we can, burn what we can’t recycle, and landfill
20 as little as possible. The Authority’s systems and programs are designed to and do
21 accomplish these goals. Page 1 of Exhibit DJP-1 depicts the increasing amount of solid
22 waste processed by the Authority over the past 20-plus years, and shows the relative
23 amount that was recycled, burned and recovered or reduced through WTE processing, or
24 land-filled.

1 **Q. Is there a need for the Expanded Facility in order for the Authority to be able to**
2 **meet its MSW processing and disposal obligations?**

3 A. Absolutely. As I discuss in more detail below, without the Expanded Facility, the
4 Authority runs the very real risk of failing to provide sufficient processing and disposal
5 capacity to meet its MSW processing and disposal obligations to the detriment of the
6 Citizens of Palm Beach County and the State as a whole. The Authority is obligated by
7 Chapter 2001-331, Laws of Florida, to process and dispose of a substantial and increasing
8 amount of MSW. If we cannot recycle it, we must burn it or bury it in a landfill. We
9 cannot currently burn more because our existing Renewable Energy Facility No. 1 (the
10 "Existing Facility") is operating at full capacity. Although it would be possible, for a
11 short period of time, to landfill the MSW that otherwise would be burned to produce
12 electricity, this would quickly and prematurely exhaust our landfill capacity. The
13 Authority has been diligently attempting to identify and acquire a suitable site for a new
14 landfill to satisfy the County's disposal needs beyond the projected remaining life of the
15 existing landfill, but after three years of effort we have not been successful. Accordingly,
16 the Authority very clearly has a pressing need for the increased capacity that will be
17 provided by the Expanded Facility so it can continue to responsibly meet its legal
18 obligations.

19
20 **Q. Would you please describe the Authority's current MSW processing and disposal**
21 **operations and infrastructure?**

22 A. At the Authority's processing and disposal site in northern Palm Beach County, the
23 Authority owns and operates the Existing Facility, the landfills, the Recovered Materials
24 Processing Facility, the Ferrous Processing Facility, the Compost Facility, the Biosolids

1 Pelletization Facility, the Vegetation Processing Facility, and the Household Hazardous
2 Waste Collection Facility.

3
4 With regard to our renewable energy capacity, the Authority's Existing Facility disposes
5 of a significant portion of the MSW stream by incineration, and in the process generates
6 steam that is used in a utility-class steam turbine-generator with a nominal rating of 63
7 megawatts. Annually, the Existing Facility processes approximately 850,000 tons of
8 MSW, incinerates approximately 620,000 tons of MSW, and produces in the range of
9 400,000 megawatt hours of net electric energy for delivery to the FPL system.

10
11 The Authority also utilizes landfill gas as a replacement for natural gas to dry and
12 pelletize wastewater treatment sludge at the Biosolids Pelletization Facility on the site.

13
14 The on-site and off-site facilities relied upon by the Authority in fulfilling its solid waste
15 management obligations include the following:

- 16
17 • Renewable Energy Facility No. 1 – The Existing Facility is an MSW fueled
18 refuse-derived fuel WTE facility. It has been operational for twenty years,
19 processing over 850,000 tons per year of solid waste into refuse-derived fuel that
20 is burned to produce renewable energy electricity.
21
22 • Landfill Operations – The Authority operates both a Class 1 and a Class 3 landfill.
23 With a total of over 50 million yards of airspace, the landfill is expected to
24 provide disposal capacity over a remaining useful life of only about 16 to 21 more
25 years. A 16 year useful life would be associated with the University of Florida's
26 "high" population projections and higher waste generation rates becoming a
27 reality. A 21 year useful life could be a possibility if more moderate population
28 growth were to occur. However, neither of these projections makes an allowance

1 for unexpected landfill consumption that could result from a major hurricane or
2 other natural disaster. These factors underscore the importance of implementing
3 the Expanded Facility. Given the difficulty in siting and developing new landfills,
4 as is evidenced by the Authority's recent efforts, the Authority cannot presume
5 that developing a replacement landfill is a reasonable certainty.
6

- 7 ● Recovered Materials Processing Facility – This facility receives, sorts, bales and
8 ships to market more than 120,000 tons annually of materials collected from
9 curbside and multi-family housing units and businesses. Materials include glass,
10 plastic, aluminum, ferrous cans, milk and juice cartons, newspaper, magazines,
11 residential mixed paper, unwanted mail, cardboard and office paper. This new
12 138,000 square foot facility has the capacity to process more than 300,000 tons
13 per year of recyclables.
14
- 15 ● Ferrous Processing Facility – More than 30,000 tons per year of ferrous metal are
16 recovered at the Existing Facility, the Recovered Materials Processing Facility,
17 and the Landfill and prepared for market at the Ferrous Processing Facility.
18
- 19 ● Compost Facility – This facility composts over 50,000 tons of vegetative mulch
20 with more than 60,000 tons of wastewater residuals from the East Central
21 Regional Wastewater Treatment Plant annually to produce compost that is
22 suitable for agricultural and horticultural uses. The facility provides a beneficial
23 outlet for processed vegetative waste and wastewater sludge thereby eliminating
24 the need to landfill or land apply the sludge.
25
- 26 ● Biosolids Pelletization Facility – This facility processes wastewater residuals
27 utilizing a drying process that produces a pelletized product marketed to fertilizer
28 blenders. Constructed and operated by the Authority and five major wastewater
29 utilities, this facility has the capacity to eliminate the need to land apply over
30 150,000 tons of biosolids annually, thereby removing over 3,000 tons of
31 phosphorus per year from the Lake Okeechobee watershed. The sludge dryers are
32 fueled primarily with landfill gas from the adjacent landfill.
33

- 1 ● Vegetative Waste Processing Facility – The Authority receives as much as
2 250,000 tons of clean yard waste per year, approximately 100,000 tons of which
3 is processed through a grinder at this facility. Approximately half of the mulch
4 produced is delivered to the Compost Facility. The balance of this material is
5 delivered to a private sector biomass-to-energy facility where it is processed into
6 boiler fuel or used as a soil amendment on agricultural fields.
7
8 ● Household Hazardous Waste Collection Facility – The Authority provides a
9 county-wide household hazardous waste collection program through the main
10 facility on our processing and disposal site and satellite collection facilities at
11 each of our transfer stations. Materials and chemicals collected include motor oil,
12 fuel, paints, solvents, pesticides, herbicides, pool chemicals, fluorescent lamps,
13 batteries, electronics, and many other items.
14
15 ● Transfer Stations – The Authority operates five transfer stations distributed
16 throughout Palm Beach County and a sixth is currently under construction.
17 Transfer stations facilitate the transfer of solid waste and recyclables from route
18 collection trucks to tractor trailers, at a ratio of approximately 5 to 1. The benefits
19 include enhanced collection efficiency, fewer trips to and shorter lines at our
20 disposal facilities, fewer road miles, lower fuel consumption and reduced CO₂
21 emissions. These transfer stations accept and haul more than 1.3 million tons of
22 solid waste and recyclables per year, amounting to approximately 70% of the
23 waste stream.
24

25 **Q. Will the relative proportions of MSW that is recycled, landfilled and burned remain**
26 **the same in the future?**

27 A. No. As shown on Page 1 of Exhibit DJP-1, our reliance on the landfill has been growing
28 because the MSW stream remaining after recycling, processing and composting greatly
29 exceeds the capacity of the Existing Facility, thus placing unsustainable demands on our
30 landfills. As shown on Pages 2 and 3 of Exhibit DJP-1, the Authority projects that this

1 trend will continue and the amount of un-combusted waste requiring landfill disposal will
2 grow. It is the Authority's intent - with the addition of the Expanded Facility - to reverse
3 that trend and reduce the volume of MSW going to the landfill. As shown on Page 5 of
4 Exhibit DJP-1, addition of the Expanded Facility will result in a more optimal balance of
5 resource recovery and volume reduction while producing electricity from a Florida
6 renewable energy resource.

7
8 **Q. Would you please elaborate on the importance of reducing demand on the**
9 **Authority's landfill capacity?**

10 **A.** Landfills are depletable resources that are negatively impacted by two primary factors -
11 population growth and increased waste generation. Landfill capacity and life is the
12 driving factor behind our planning and decision making. To that end, we perform annual
13 analyses of our landfill capacity that we call the Landfill Depletion Model. The model
14 helps us identify the points in time when decisions must be made and helps to evaluate
15 alternatives that impact landfill life. The model considers the dynamic interrelationships
16 between the available processing and disposal options, population projections and
17 population growth rates, per capita generation rates, recycling rates, diversion rates,
18 incineration capacity and reduction effectiveness, landfill compacted densities, and cover
19 material requirements and produces a projected date of landfill depletion. As shown on
20 Page 2 of Exhibit DJP-1, if we do not implement the Expanded Facility, and assuming
21 future waste generation tracks our medium projection, we project that our existing
22 landfill will be fully depleted by 2031. As previously discussed, higher than projected
23 population growth or MSW generation rates, including unexpected increases in waste due

1 to hurricanes or other natural disasters, would deplete available landfill capacity much
2 more rapidly.

3

4 **Q. Why doesn't the Authority simply increase its landfill capacity?**

5 **A.** New, and to a lesser extent existing, landfills are subject to very stringent siting, design,
6 permitting, construction and operating constraints due to their potential to cause
7 significant environmental harm. Additionally, landfills consume large areas of land
8 which can be very expensive and in some cases acquisition costs can be prohibitive,
9 especially near populated areas. Furthermore, public opposition to landfills typically
10 prevents landfills from being located near existing or proposed development, forcing
11 them farther away from centers of population and into receding rural and agricultural
12 areas. For these reasons, the feasible potential sites for future landfill development by the
13 Authority are located far from the population centers of the County and the Authority's
14 current integrated site at which waste-to-energy, recycling, vegetation processing, and
15 composting occur prior to landfilling. Complicating matters further is the reality that the
16 only available large tracts of land in Palm Beach County suitably removed from existing
17 or proposed development are located within the Everglades Agricultural Area, much of
18 which has been or is in the process of being reserved for State and Federal everglades
19 restoration projects.

20

21 The financial and environmental costs of MSW transportation over long distances - in
22 terms of fuel consumption and greenhouse gas emissions - add significantly to the
23 economic and environmental cost of landfilling and to the overall cost of solid waste
24 management. The transportation impacts were one of the most significant factors driving

1 our decision to construct the Expanded Facility adjacent to our Existing Facility on our
2 existing campus. Having said that, the Authority has endeavored over the past four years
3 to acquire suitable property to construct new landfill space to carry the County for the
4 next 50 years or more into the future. At this point, there are no guarantees that our
5 efforts will be successful. But regardless, as noted previously, landfilling alone is not the
6 solution to a complex MSW management and disposal problem. Landfills are a valuable
7 resource that must be conserved. Combinations of complementary processes and
8 operations, including the Expanded Facility, are necessary to meet the Authority's waste
9 disposal, recycling and environmental preservation mandates and objectives.

10
11 Even if we were to discount the negative aspects of hauling MSW long distances – and in
12 some cases double-hauling – landfills in and of themselves are simply not a viable option
13 for solid waste management. In addition to the environmental detriment of hauling
14 MSW, natural decomposition of MSW in the landfill releases methane gas, a major
15 component of “landfill gas”. Methane is reputedly much more harmful as a greenhouse
16 gas than is carbon dioxide; in fact, the EPA estimates that it is 21 times more potent.
17 While we certainly collect and dispose of landfill gas in accordance with federal and state
18 regulations, the technology is such that a significant amount will inevitably escape to the
19 atmosphere. Importantly, volume reduction via combustion in the WTE facility produces
20 a more-or-less inert residue which, when disposed of by landfilling, does not release
21 methane gas into the atmosphere.

22
23 In the absence of the Expanded Facility, the Authority will need to substantially increase
24 landfill capacity sometime in the next several decades. We would prefer not to, and have

1 determined that the Expanded Facility provides a cost-effective, environmentally
2 beneficial and financially feasible means to defer new landfill development into the long-
3 term future while meeting our obligations in an environmentally sound and timely
4 manner.

5
6 **Q. Would you please describe the Expanded Facility's contribution to the Authority's**
7 **Integrated Solid Waste Management Plan?**

8 **A.** The Existing Facility has been operating at or near design capacity for more than ten
9 years and the depletion of our landfill is in sight. As it did in the 1980's, the Authority
10 must take significant aggressive action to ensure that we have the systems and programs
11 in place to manage the County's waste for the next 20, 30 or 50 years. The Authority has
12 determined that expedited implementation of the Expanded Facility is by far the most
13 appropriate and suitable solution available. The Expanded Facility will provide
14 additional MSW combustion capacity of up to 3,000 tons per day. Combustion reduces
15 the volume of MSW by approximately 90%, which in turn significantly reduces
16 landfilling of raw waste and extends the life of the landfill.

17
18 Further, as set forth in Florida's Energy, Climate Change, and Economic Security Act of
19 2008 (Section 403.7032, Florida Statutes), the solid waste used to produce renewable
20 energy counts toward the State's goal of reducing the disposal of recyclable solid waste
21 by 75%. As shown on Page 4 of Exhibit DJP-1, the proportion of combusted material to
22 uncombusted material destined for the landfill will increase dramatically when the
23 Expanded Facility comes online in 2015. Our current projections indicate, based on our

1 medium projection, that construction of a 3,000 ton per day mass burn Expanded WTE
2 Facility in 2015 will extend the life of our landfill by 18 years.

3

4 **Q. Has the Authority considered any other ways to increase MSW processing capacity?**

5 A. Yes. We consider expansion of our existing processing and disposal operations on a
6 regular basis and have looked at this in great detail over the past few years. Besides our
7 substantial in-house expertise, we also enlisted the aid of consultants and experts
8 knowledgeable in MSW handling, processing, recycling and disposal to assist us in this
9 regard. Among other things, we carefully analyzed our MSW waste stream, conducted
10 surveys and projections of the composition of the MSW stream in the future. As a result
11 of this analysis, the Authority constructed a new expanded Recovered Materials
12 Processing Facility. This facility has enabled the Authority to expand its recycling
13 program to include ferrous metals, residential mixed paper and unwanted mail, thus
14 reducing the amount of waste that otherwise would be land-filled.

15

16 Moreover, in view of the significant quantity of MSW that cannot presently be
17 incinerated due to lack of available incineration capacity as well as the need to conserve
18 the Authority's valuable landfill capacity, an alternative that the Authority looked into
19 quite rigorously was the potential to "export" the Authority's remaining unprocessed
20 waste to an off-site landfill or other such facility for disposal. Other than the Expanded
21 Facility, this appeared to present the only other option capable of reliably managing Palm
22 Beach County's high volume of waste without depleting the Authority's landfill.
23 Accordingly, because the Authority has been approached on a number of occasions over
24 the years with proposals to ship our waste out of the County, we undertook a serious

1 evaluation of the potential for waste export early on in the current planning process. In
2 the end, the export option that seemed most feasible was to ship MSW to Waste
3 Management Inc.'s Okeechobee Landfill.

4
5 However, our analyses indicated that in the best case, hauling waste to Okeechobee
6 would add some 63 travel miles per load and, over the initial 50 year period, impose \$1.3
7 billion in additional transportation cost, consume 74 million more gallons of fuel, and
8 produce an additional 1.6 billion pounds of CO². As significant as these economic and
9 environmental impacts would be, the business risks would be equally significant –
10 perhaps even more so for several reasons. First, the cost of transporting waste over
11 longer distances is heavily dependent on fuel and labor costs. Increased travel distance
12 creates greater exposure to disruptions in fuel supplies and fuel price spikes. Second, the
13 potential exposure to accidents is directly proportional to the distance traveled and the
14 amount of time spent on the road. Third, delays in shipping due to road closures,
15 accidents or other unforeseen incidents would result in higher waste inventories at our
16 transfer stations, which would create bottlenecks and long lines and perhaps encourage
17 illegal dumping. Fourth, disposal capacity may not be available indefinitely, which
18 would require us to seek other and potentially more costly alternatives in the future.
19 Finally, every change in law or regulation would create a “re-opener” in our disposal
20 contracts that would present unquantifiable and unacceptable economic and business risk.
21 Without our own disposal option, the Authority would not be in an advantageous position
22 with respect to contracting with private sector landfill operators.

23

1 The Authority has created a sound, efficient and economical system that maintains
2 ownership, and just as importantly, total control over its waste management systems.
3 This approach reduces risk, increases reliability, provides stability, retains or creates jobs
4 in the County, and keeps money and other financial benefits in the County. This is not to
5 say that we don't recognize that there may from time-to-time be strategic advantages to
6 working with other partners when mutually agreeable and consistent with the Authority's
7 objectives. For example, we have an ongoing waste exchange agreement with the private
8 sector firm Waste Management through which MSW from Martin County is delivered to
9 our Existing Facility and an equal quantity of our MSW is delivered from the Delray
10 Transfer Station to a third-party owned facility in north Broward County. This
11 arrangement results in a mutual reduction in hauling distances and accompanying fuel
12 and transportation expenses. We also have a "standby" agreement with Waste
13 Management for the delivery of waste to their landfills if needed.

14

15 For the reasons discussed above, however, waste export out of the County is simply not a
16 viable MSW disposal plan for the Authority and certainly does not constitute a viable
17 alternative to the Expanded Facility.

18

19 **Q. Did the Authority consider any other alternatives to the Expanded Facility?**

20 **A.** We looked at a several other things conceptually, but due to the large volumes of MSW
21 with which we deal, the composition of the MSW stream and the markets for recycled
22 materials, none were identified as suitable for the Authority's crucial need to dispose of
23 large quantities of MSW in a reliable manner. As previously stated, we recently
24 constructed a new Recovered Materials Recycling Facility, which in addition to

1 providing sufficient capacity for the foreseeable future, has enabled the Authority to
2 accept additional materials in the recycling program, including ferrous cans, residential
3 mixed paper and unwanted mail. That said, experience indicates that the amount of
4 recyclable material as a percentage of the MSW stream remains relatively constant, and
5 in fact may be diminishing due to market factors such as reduced newspaper circulation
6 and increased reliance on electronic media. Moreover, our recycling and materials
7 recovery operations already operate at high efficiencies removing the vast majority of
8 targeted recyclable materials. As a result, it is simply not feasible or realistic to expect
9 volume reduction of MSW from improvements in residential recycling, commercial
10 recycling, metals recovery, composting and vegetative waste processing comparable to
11 that which the Expanded Facility can provide. Granted there may be some incremental
12 gains, but overall the impact of such improvements on our MSW disposal needs will be
13 insufficient to significantly reduce projected future landfill consumption to the extent
14 desired.

15
16 In the time-frame and on the scale that the Authority needs to expand its MSW
17 processing capability, the only alternative to the Expanded Facility that could handle the
18 volumes involved and provide the necessary volume reduction would be incineration
19 without energy recovery. However, that concept would be inconsistent with the State's
20 policy of resource recovery, contrary to the Authority's goals, a waste of a valuable
21 renewable energy resource, and costly to the State and its citizens.

22
23 The bottom line of the Authority's analysis and expert opinion, bearing in mind the heavy
24 burden imposed on the Authority with respect to MSW within the county, is that no

1 realistically available alternatives to the Expanded Facility – alone or in combination –
2 would be capable of meeting the Authority’s demonstrated need for increased waste
3 management and disposal capacity. After several years of study, analysis and other
4 efforts by the Authority, its consultants and staff, it is clear that the Authority must add
5 the Expanded Facility to its operations no later than 2015 in order to meet its long-term
6 disposal obligations, conserve valuable landfill space, and achieve the State-mandated
7 75% recycling goal.

8
9 **Q. Has the current economic downturn affected the amount of MSW the Authority**
10 **currently receives, or the amount it is projecting to receive in the future?**

11 A. With regard to current waste receipts, the answer is yes. For the year ended September
12 30, 2009, incoming deliveries of garbage and trash – our two largest waste streams and
13 those that are primarily targeted for combustion – were down approximately 13%
14 compared to the year ended September 30, 2007. Data for the current year indicates that
15 the waste stream is stabilizing. As previously addressed, the Authority uses the Landfill
16 Depletion Model to estimate landfill depletion based on projections of future waste
17 deliveries. As this analysis is performed annually, the Authority has evaluated the trend
18 in waste deliveries and the revised population projections from the University of Florida
19 as well as other factors and incorporated these trends in the projections of future waste
20 generation. Based on these projections, and after an evaluation of multiple combustion
21 unit and facility sizing scenarios in February 2010, the Authority Board approved the
22 sizing of the facility at 3,000 tons per day.

1 **Q. Would delay in adding the Expanded Facility cause adverse consequences?**

2 **A.** Yes, it most certainly would. Delaying the Expanded Facility would have significant
3 adverse impacts on the Authority's ability to dispose of MSW by more rapidly depleting
4 the remaining landfill capacity, to comply with its legal obligations to dispose of MSW,
5 to add a much-needed source of renewable energy to Florida's electric utility fuel mix,
6 and would deprive the local economy of hundreds of millions of dollars of investment in
7 plant and equipment and the hiring of hundreds of worker to construct and operate the
8 Expanded Facility.

9
10 The Authority and citizens of Palm Beach County will be forced to identify, purchase,
11 develop, finance and implement less reliable, less desirable and less environmentally
12 friendly means of MSW processing and disposal in contravention of the State solid waste
13 disposal policy and the specific responsibilities and goals of the Authority. The State and
14 its citizens would be forced to accept the negative consequences of disposing of MSW
15 via landfill where it will consume valuable real estate, will decompose to release methane
16 gas – a significant green house gas – and potentially result in other negative impacts.
17 Moreover, the long term costs associated with operating a new landfill, including the cost
18 of hauling MSW over fairly long distances, will be much more costly and risky to the
19 Authority and the citizens.

20
21 Finally, to consider a new landfill as a substitute for the Expanded Facility, it must be
22 assumed that the Authority will be able to locate, finance, purchase and permit suitable
23 real property; and, be able to construct and begin commercial operation of a new landfill
24 in a timely manner – a highly risky assumption that would not be confidently predictable.

1 **Q. How is the Authority funded and how does the Authority intend to cover the capital**
2 **and operating costs of the Expanded Facility?**

3 **A.** The Authority is responsible for MSW and recycling collection in unincorporated Palm
4 Beach County; and, for disposal of all MSW produced in the County. The Authority
5 provides solid waste and recycling collection through private haulers that are issued
6 exclusive franchises through a competitive bid process conducted every five years in
7 accordance with Chapter 2001-331, Laws of Florida. The collection enterprise is funded
8 by a Mandatory Collection Special Assessment assessed against every residential unit in
9 the County and billed on the annual property tax bill. Commercial customers are billed
10 directly by the franchise hauler.

11
12 The primary funding mechanism for solid waste disposal is the Non-ad Valorem Special
13 Assessment charged on the annual property tax bill to the owner of every property in the
14 County. The Assessment is a system of user fees based on a property's potential to
15 generate waste as determined by waste generation studies. While residential units are
16 assessed for 100% of the cost of disposal, commercial properties are billed partially
17 through the assessment and partially through tipping fees. This "split assessment" is
18 intended to provide an incentive for businesses to control the amount of waste they
19 generate and to encourage recycling. In addition to the Assessment and commercial
20 tipping fees, system revenues include tipping fees for materials that aren't assessed (such
21 as building debris, tires, vegetation and wastewater sludge); revenues from the sale of
22 electricity; revenues from recycling; interest income; and other revenues from other
23 miscellaneous sources.
24

1 The Authority's Indenture of Trust dictates the Authority's fund structure and also
2 establishes minimum requirements for revenues in total and the Assessment specifically.
3 Among other things, the Indenture establishes minimum debt service coverage (annual
4 net revenue divided by annual debt service must equal at least 1.10) and minimum
5 Disposal Assessment (the Disposal Assessment must at least equal debt service)
6 requirements. Each year, the Authority establishes and adopts a budget for the upcoming
7 fiscal year and through this process determines the required assessment rates. The
8 Budget and rate schedule are approved and adopted by the Board and in accordance with
9 the Indenture, approved by the Consulting Engineer.

10
11 The Authority has performed financial feasibility studies to project the impact of the
12 Expanded Facility on future budgets and rates, and based in part on those projections and
13 in consideration of the environmental benefits previously discussed, the Board has
14 determined that the Expanded Facility is the most economical solution to achieve the
15 Authority's objectives.

16
17 **Q. How will the proposed contract for the sale of renewable energy to FPL benefit the**
18 **Authority and the citizens of Palm Beach County?**

19 **A.** As discussed in the Petition and the testimony of Mr. Bruner and Mr. Hartman, the
20 Authority is negotiating with FPL for the sale of electrical output of the Expanded
21 Facility consistent with the terms outlined in Appendix A of the Petition. The sale of
22 energy under the proposed contract will be structured under Section 377.709, Fla. Stat.,
23 as an advanced funding program for a local government municipal solid waste facility
24 that produces renewable energy. The proposed contract will include an advanced

1 capacity payment to assist in funding of the electrical component of the Expanded
2 Facility, which includes the generator, turbine, and related transmission facilities. Tax
3 regulations prohibit SWA from financing the electrical generation component of a solid
4 waste disposal facility with tax exempt debt, so the advanced capacity payment is
5 intended to and will fund the \$56,643,942 budgeted cost of the Expanded Facility's
6 electrical component. The proposed contract will also include energy payments that will
7 provide the Authority with a stream of revenues that which will contribute to the
8 Authority achieving its financial objectives for the Expanded Facility. As a result, the
9 Expanded Facility will provide the Authority and the citizens of Palm Beach County with
10 a financially viable means to dispose of solid waste.

11

12 **Q. Does this conclude your direct testimony?**

13 **A. Yes it does.**

1 MR. ZAMBO: Tender the witness for
2 cross-examination.

3 CHAIRMAN GRAHAM: Thank you.

4 Ms. Larson.

5 CROSS EXAMINATION

6 BY MS. LARSON:

7 Q Good morning, Mr. Pellowitz.

8 A Good morning.

9 Q Do you have a copy of your deposition?

10 A I do.

11 Q Okay. Otherwise I'd make a copy for you. Do
12 you have it?

13 A Yes.

14 Q I'm sorry. I'm trying -- I was looking down
15 there.

16 Please turn to page 11 of your deposition,
17 beginning at line 8. Can you please read the question
18 associated with line 8, please, so I make sure I'm in the
19 right place? In your deposition beginning on page 11 at
20 line 8 you testified that the advanced capacity under the
21 statute is the lesser of the present value of the avoided
22 capital cost of the avoided unit or the cost, the design
23 cost of the Solid Waste Authority power block. Correct?

24 A I'm having trouble finding that spot. My line,
25 page numbers might be different than yours. Hold on.

1 Q I have it.

2 A Well, I can't find it. But, yes, I did.

3 MS. LARSON: Well, it's my copy. But, I mean,
4 as long as you bring it back to me. I'm sorry.

5 MS. RULE: Just by way of explanation, our
6 documents seem to have printed out with different page
7 numbers. I think that's what we're trying to resolve now.

8 CHAIRMAN GRAHAM: I tell you what, we have --
9 I've got about 10:30. Let's take about a five-minute
10 recess and let's figure out where we are in this thing,
11 and we'll be right back.

12 (Recess taken.)

13 CHAIRMAN GRAHAM: Ms. Larson and Mr. Zambo, have
14 you guys lined your documentation up?

15 MR. ZAMBO: We have, Mr. Chairman, yes. We have
16 got it straightened out.

17 CHAIRMAN GRAHAM: Okay.

18 MS. LARSON: Mr. Zambo and I, for the record, in
19 the deposition it would be Page 13. It's on the side. It
20 actually starts -- the way that it -- it starts in the
21 middle of the page as Page 13. And when you print it out,
22 it says Page 11 on the bottom, but on the side bar in the
23 middle of the page it says Page 13. So hopefully that
24 will clear up the confusion. I just want to make it clear
25 for the court reporter so she knows where we are.

1 **CHAIRMAN GRAHAM:** Okay.

2 **MS. LARSON:** We can start again?

3 **CHAIRMAN GRAHAM:** Ms. Larson, you're on.

4 **BY MS. LARSON:**

5 Q. Okay. On Page 11 of your deposition -- you see,
6 it's Page 11 for me. Should I say Page 13?

7 A. I know where you are.

8 **MS. LARSON:** You know where I am. Does
9 everybody know where I am? Good.

10 Q. You gave your testimony under oath, Mr.
11 Pellowitz, correct?

12 A. Yes.

13 Q. In your deposition, printed Page 11, sidebar
14 Page 13, you stated that the advanced capacity under the
15 statute is the lesser of the present value of the avoided
16 capital cost of the avoided unit or the cost, the design
17 cost of the Solid Waste Authority power block, correct?

18 A. Yes.

19 Q. All right. Mr. Pellowitz, do you have a copy of
20 Statute 377.709?

21 A. I do.

22 Q. Okay. Because I have copies in case you didn't
23 have it.

24 Do you have your copy?

25 A. Yes.

1 Q. Okay. Sorry. You are way down there; I feel
2 like I'm in a football field.

3 The provision of the statute expressly states
4 that the advanced capacity payment is limited to the
5 amount which is not more than the amount of the design
6 cost of the electrical component, correct?

7 A. That is correct.

8 Q. So contrary to your sworn testimony in your
9 deposition, the word design cost of the Solid Waste
10 Authority power block are not found in this provision of
11 the statute.

12 A. Hold on. Let me find the section of the
13 statute.

14 Q. I have it marked. 3(b); 1(b).

15 A. I'll read it. The Commission -- it starts with
16 1(a) is the net present value of avoided capacity cost for
17 the electric utility calculated over the period of time
18 during which the local government contracts to provide
19 electrical capacity to the utility. The avoided capacity
20 cost is that cost established by the Commission pursuant
21 to Section 366.05, and in effect by Commission rule at the
22 time the order -- in effect at the time the order
23 approving the contract is issued, or an amount which is
24 not more than the amount of the design cost of the
25 electrical component of the solid waste facility as

1 determined by the Commission to be reasonable and prudent
2 at the time of its order.

3 I believe the phrase the design cost of the SWA
4 power block properly summarizes that or properly
5 represents it.

6 Q. So I am to understand the design cost and the
7 full costs are one in the same?

8 A. The design cost of the power block is the
9 budgeted cost of the power block.

10 Q. Have you reviewed the Solid Waste Authority
11 response to Staff Interrogatory 25F? I have a copy, if
12 you don't.

13 A. Yes.

14 Q. You would agree that the Solid Waste Authority
15 response to Staff Interrogatory 25F stated that the cost
16 of design for the electrical component of the Solid Waste
17 Authority expanded facility is only \$1.65 million?

18 A. That number was revised to 3,298,884, and that
19 represents the cost of designing the power block, not the
20 designed cost of the power block.

21 Q. Could you repeat that? I apologize.

22 A. The response to Interrogatory 25F represents the
23 cost to design the power block, not the design cost of the
24 power block, which includes the cost to construct and to
25 put in place the power block for service.

1 Q. Well, in staff interrogatory -- the response was
2 assuming the cost of design means the engineering fees and
3 professional charges for the design of the electrical
4 component, the system of the expanded facility is the
5 amount of \$1,657,500.

6 A. Yes. And the cost of design here is defined in
7 the answer as the engineering fees and professional
8 charges for the design of the electrical component system.
9 It does not include the cost of constructing and putting
10 into place that system.

11 Q. You would agree that the \$1.65 million amount is
12 substantially less than the \$60 million that FPL expects
13 its ratepayers to pay in an advanced capacity payment
14 equal to the full cost of the power block?

15 A. I would agree it's less. They are two different
16 numbers.

17 MR. ZAMBO: Mr. Chairman, if I may?

18 CHAIRMAN GRAHAM: Yes.

19 MR. ZAMBO: Both Mr. Bruner and Mr. Pellowitz
20 have corrected the record. We filed a supplement to our
21 interrogatory responses, and the number is now \$3,298,000.
22 Ms. Larson continues to use the old number, but now we
23 have an actual firm number from the vendor who we've
24 contracted with.

25 CHAIRMAN GRAHAM: Okay. Continue, Ms. Larson.

1 **BY MS. LARSON:**

2 Q. Did the Solid Waste Authority staff represent to
3 the Solid Waste Authority Board that the advanced capacity
4 payment would be approximately \$36 million during the
5 Solid Waste Authority Board meeting held on February 9th,
6 2011?

7 A. We provided a status report update. That was an
8 estimate based on the information available at the time.

9 **MS. LARSON:** Just one more question I had.

10 (Pause.)

11 I'm done, sir. Thank you.

12 **CHAIRMAN GRAHAM:** Okay. I thought I heard you
13 say you had one more question.

14 **MS. LARSON:** I had it in my head, and it's --
15 (snap finger). We shouldn't have took a five-minute
16 break.

17 **CHAIRMAN GRAHAM:** All right, Ms. Larson.

18 Staff.

19 **MR. MURPHY:** Thank you.

20 **CROSS EXAMINATION**

21 **BY MR. MURPHY:**

22 Q. Mr. Pellowitz, I'm Charlie Murphy for the
23 Commission staff.

24 I'd like to go with you through some of the
25 exhibits, and the numbers I'll be using are the Hearing ID

1 Numbers, not the Staff Exhibit Numbers. Are you familiar
2 with Hearing Exhibit Number 3, which is a composite
3 exhibit consisting of various SWA responses to Commission
4 staff interrogatories and request for production of
5 documents?

6 A. Okay. Can you please repeat the question? I
7 just got a list of the exhibits.

8 Q. Sure. Are you familiar with Hearing Exhibit 3?

9 A. Under Hearing ID Number 3?

10 Q. Yes, sir.

11 A. Yes, I am.

12 Q. And are you similarly familiar with Hearing
13 Exhibit 9? These are the supplements.

14 A. Yes, I am.

15 Q. And how are you familiar with these exhibits?

16 A. I either created them or submitted them.

17 Q. And, finally, are you familiar with Hearing
18 Exhibit 4, which is the transcript of the deposition you
19 had with Mr. Bruner in this case?

20 A. Yes, I am.

21 Q. Is the information in these exhibits related to
22 your prefiled testimony in this case?

23 A. Yes, it is.

24 Q. Could you describes how?

25 A. The information in these exhibits relates to my

1 testimony in terms of establishing the need for the Solid
2 Waste Authority disposal facility, and also addresses
3 issues related to power generation and the advanced
4 capacity payment.

5 Q. In general terms, does it provide data related
6 to the case?

7 A. It does.

8 Q. Does it provide an overview of the case?

9 A. It does.

10 Q. Does it provide background or context for the
11 case?

12 A. It does.

13 Q. With the understanding that the information has
14 become more specific over time as it has been updated,
15 does the information in the exhibits reflect the position
16 of SWA in this case?

17 A. It does.

18 Q. Thank you. What is the new committed capacity
19 for the proposed unit?

20 A. The Authority has not as yet identified the
21 specific committed capacity for the unit, but has narrowed
22 the range to a minimum of 70 megawatts and a range from 70
23 to 80 megawatts.

24 Q. Under the contract, is SWA permitted to elect a
25 percentage of its energy payment that will be fixed?

1 A. Yes.

2 Q. Will you explain what this means and why it
3 matters?

4 A. That is important to the Authority in that it
5 provides the opportunity for us to promote rate stability
6 by fixing a portion of the energy revenues.

7 Q. Could you expound on fixing a portion of the
8 energy revenue?

9 A. The Authority's existing agreement is a more
10 traditional capacity and energy arrangement. Those
11 capacity payments are -- if you achieve the minimum
12 capacity factor -- are reliable, predictable, and stable
13 over the period of a year, and that helps to promote
14 budget stability and assists us in budget preparation.
15 The opportunity to fix a portion of the energy revenues in
16 this contract would provide that same type of stability.

17 Q. Is there an allocation of risk involved in this?

18 A. Yes.

19 Q. Could you describe that?

20 A. In the event that future energy revenues are
21 higher than forecast, there would be a downside -- if
22 future energy prices are higher than forecast, there would
23 be a downside to the Authority in terms of our energy
24 revenues would be lower than they would be if we didn't
25 fix it, and that would work in the converse in FPL's favor

1 and FPL's ratepayers' favor if energy prices were lower.

2 Q. Thank you. Has SWA elected the percentage yet?

3 A. We have not as yet.

4 Q. Do you know when that will be known?

5 A. The contract specifies that the board elects
6 that percentage -- the Board of the Solid Waste Authority
7 would elect that percentage prior to the execution of the
8 contract, which is, I believe, 75 days maximum from a
9 final non-appealable order by this body.

10 Q. And except for this determination of what
11 percentage, and then also whether -- where you are between
12 70 and 80, are there any other variables or pertinent
13 information that is missing from the contract?

14 A. I don't believe so.

15 Q. Is the term of the contract between SWA and FPL
16 for 17 years?

17 A. It is.

18 Q. And can it be extended for an additional 26
19 months?

20 A. It can be extended to 2034.

21 Q. After the contract is complete with FPL, will
22 SWA have the ability to enter into another contract with
23 either FPL or another utility?

24 A. Yes.

25 Q. And a new contract could include capacity and

1 energy payments?

2 A. I believe it could, yes.

3 MR. ZAMBO: Mr. Chairman, can I ask a clarifying
4 question? I'm not sure if the question that Mr. Pellowitz
5 responded to is the same question that was asked.

6 Did you mean after the contract expires, or did
7 you mean while this contract is in effect?

8 THE WITNESS: No, after the contract expires.

9 CHAIRMAN GRAHAM: Staff, can I get you to repeat
10 that question?

11 MR. MURPHY: Yes. If there is a new contract, I
12 mean, at the expiration of this one, could it include
13 capacity and energy payments? And I believe the answer
14 was yes.

15 THE WITNESS: Yes.

16 MR. MURPHY: Staff has another exhibit that we
17 had not identified previously. It is the notice that was
18 published in the newspaper for this hearing, and we would
19 like for you to identify it as Hearing ID Number 13, and
20 we would just call it the notice.

21 (Exhibit 13 marked for identification.)

22 CHAIRMAN GRAHAM: Did you work hard to come up
23 with that name?

24 MR. MURPHY: I studied it; yes, sir.

25

1 BY MR. MURPHY:

2 Q. Mr. Pellowitz, is that the notice that was
3 published for this proceeding?

4 A. I presume so. It's the first I've seen it.

5 Q. I'll take that as a yes.

6 A. Yes; it is a yes.

7 MR. MURPHY: Okay. That's all I have, Mr.
8 Chairman.

9 I would ask that Hearing Exhibits -- and this is
10 the Hearing ID Number -- 3, 4, 9, and 13 be moved into the
11 record. I believe that Ms. Larson may have questions.

12 CHAIRMAN GRAHAM: 3, 4, 9 -- you don't want 12
13 and 13?

14 MR. MURPHY: Yes; 3, 4, 9, 13. My co-counsel is
15 telling me they may want to do a redirect before we move
16 this in.

17 CHAIRMAN GRAHAM: Okay. I just wanted to make
18 sure I have the numbers; 3, 4, 9, and 13.

19 MR. MURPHY: Yes, sir.

20 CHAIRMAN GRAHAM: I did not hear you say 12.

21 MR. MURPHY: It would be up to the company to
22 move 12 in.

23 CHAIRMAN GRAHAM: Okay. Ms. Larson, which ones
24 did you have a question about?

25 MS. LARSON: Did you want me to address these

1 now?

2 **CHAIRMAN GRAHAM:** Yes. There's ones that you
3 said you had a question for, a question about.

4 **MS. LARSON:** Uh-huh.

5 **MS. HELTON:** Mr. Chairman, it may be better to
6 have Mr. Zambo or Ms. Rule do redirect, and then to go
7 over the exhibits so we have the full range of testimony
8 that we are going to have on the exhibits.

9 **CHAIRMAN GRAHAM:** Okay. Hold on just a second,
10 Ms. Larson.

11 Is there any redirect?

12 **MR. ZAMBO:** We have no redirect, but we'd like
13 to move Exhibit 12, the exhibit of Dan Pellowitz's Direct
14 Testimony, DJP-1.

15 **CHAIRMAN GRAHAM:** Okay. Any redirect from FPL?
16 Okay. Ms. Larson.

17 **MS. LARSON:** As far as Number 4 is concerned, I
18 have to address the fact that when this Commission reads
19 it, during the testimony of Mr. Bruner and Mr. Pellowitz,
20 Mr. Zambo was testifying through most of the deposition.
21 So that's why I have concerns, because he just did it
22 again. As a layperson looking at this, you know, he was
23 testifying for the witnesses. And I'm concerned about
24 Number 4. So -- and I guess that's Number 12, also, is --
25 I'm just worried about the way the depositions were

1 handled.

2 Because I had inquired, Mr. Chair, about how a
3 panel deposition had ever been done here at the Solid
4 Waste Authority. I never saw one. I saw many witnesses
5 testifying before you, I could not find an example of a
6 panel deposition. And I tried, I really did try to look
7 through your history of how things were done. And it was
8 a very unusual case, because in any realm of law that I'm
9 familiar with, which I go watch cases, is civil, Supreme,
10 I have never seen a panel deposition. So that was my
11 first concern.

12 And the second concern is during the testimony
13 that was given by Mr. Bruner and Mr. Pellowitz, Mr. Zambo
14 spoke several times answering. And, you know, that's from
15 a lay -- I'm not a lawyer, but that's just, that is my
16 concerns with Number 4. I just wanted to explain it to
17 the Commission.

18 **CHAIRMAN GRAHAM:** Ma'am, I have never seen a
19 panel deposition, either, but I haven't been a
20 Commissioner that long.

21 **MS. LARSON:** I have never -- in your whole
22 history, I looked -- I asked for references, I asked for
23 anything, and that was not forthcoming from anybody. And
24 I looked -- I tried to go back, you know, anywhere. I was
25 looking at old cases. I tried to go back many, many years

1 to see a panel deposition anywhere. So the way that it
2 was handled in this particular instance -- I certainly
3 hope that the Commission is not setting a precedent with
4 this particular case, because a panel deposition -- these
5 are -- I'm voicing my concerns and hope you acknowledge
6 them.

7 **CHAIRMAN GRAHAM:** Right now we're just trying to
8 put as much as we can into the record, so we are just
9 going to make sure that the record is noted that -- your
10 objecting to the way the deposition was taken, is that
11 correct?

12 **MS. LARSON:** Uh-huh; yes.

13 **CHAIRMAN GRAHAM:** Okay. Did you have anything
14 to add?

15 **MS. RULE:** I would like to respond very briefly.
16 Ms. Larson has raised both procedural and a substantive
17 objection to the deposition. The time for a procedural
18 objection has long passed, and the procedure of deposing
19 two witnesses at a time has not prejudiced anybody. Every
20 party who wanted to ask questions had the ability to ask
21 questions and direct them to either witness. And with
22 regard to the substance, it's common practice here before
23 the Commission to ask legal questions of witnesses who
24 then answer based on their own knowledge. But Mr. Zambo
25 did step in to offer a legal opinion in the nature of, you

1 know, a response to a legal question. At no time did the
2 witness lose the opportunity to give his understanding of
3 what the factual response was.

4 **CHAIRMAN GRAHAM:** Okay. Staff.

5 **MR. MURPHY:** Commissioner, I don't believe that
6 we would rely on the statements of the attorney as
7 evidence in this proceeding. It would be the sworn
8 witnesses who were doing the depositions. So with that in
9 mind, I'm hoping that will mitigate the concern.

10 **MS. LARSON:** With all due respect, Mr. Chair, I
11 did object to the panel deposition immediately in an
12 e-mail to everybody, you know, involved in this case,
13 because I did -- I'm just -- I'm concerned that a
14 precedent was set here in this particular case, and I have
15 to voice that. I did try to acknowledge it, and do it
16 properly as I am -- I'm not lawyer, but I did try to
17 acknowledge this situation, raise concerns with the
18 situation, and voice my concerns several times over in the
19 manner that it was held. I just want that on the record,
20 and I want the Commission to understand that. It's not --
21 I don't know if it's a legal argument or whatever it is,
22 but it was the manner.

23 And, you know, when they list, you know -- and
24 Solid Waste Authority, they are very good. They listed
25 two witnesses and that's who testified. And I did -- but

1 it's the protocol. And I'm just concerned. And I did --
2 I guess it's Ms. Rule, she said that I didn't object to
3 this. I objected the minute I got the e-mail. Ten
4 seconds into reading it I said no. So as far as -- maybe
5 I didn't handle it in the proper manner of an objection to
6 the Commission, and I hope you will bear with me with
7 that, but I did -- I could probably go back and find the
8 e-mail for you and send it all, you know, send it on and
9 put it into the record.

10 **CHAIRMAN GRAHAM:** Well, Ms. Larson, right now
11 we're just trying to get as much as we can into the
12 record. And I know you may not be an attorney, but you
13 are doing a far better job than a lot of attorneys that I
14 do know, so --

15 **MS. LARSON:** I'm trying not to waste your time.
16 Thank you.

17 **CHAIRMAN GRAHAM:** No, you are not at all. This
18 is what we are here for.

19 Mary Anne, did you have anything you want to add
20 before we add all of these things into the record?

21 **MS. HELTON:** I would like to make the record
22 clear that it's my understanding that while it might not
23 be common practice, we have done panel depositions before.
24 We certainly have done panel testimony before where we
25 have more than one witness on the stand that presents

1 testimony to you.

2 I think the staff and the parties in the past
3 have seen that as an efficient way to get the most and the
4 best information available to all participants to the
5 process. And I would agree with what Ms. Rule said with
6 respect to I'm not sure how anyone was prejudiced from
7 that in that there was notice given, that all were given
8 an opportunity to ask questions.

9 CHAIRMAN GRAHAM: Well, I guess my understanding
10 would be, since Ms. Larson said she did object to the way
11 it was done, that she was overruled in the prehearing?

12 MS. HELTON: I'm not sure that her objection was
13 ever raised to the level where it would have gone before
14 the prehearing officer. I don't believe that she filed
15 any type of motion, formal motion where that would have
16 been brought to the prehearing officer's attention. If
17 she had done so, I think that if I had been asked, I would
18 have suggested that her motion be denied, because I think
19 it is a proper use of our resources to do a panel
20 deposition and to do panel testimony in a proceeding.

21 CHAIRMAN GRAHAM: Ms. Larson.

22 MS. LARSON: I don't want to belittle this, but
23 you have never -- I never found a place where you -- there
24 is a difference between testimony here before the
25 Commission, yes, you have panels, you have had -- I have

1 watched Commission meetings where you have had eight
2 people testifying on one particular case and one
3 particular issue, and they were directed to Mr. John Doe
4 and Mrs. Jo Doe. But my objection and my concern is the
5 panel deposition. And as she pointed out, I might have
6 not done it correctly; I'm just concerned -- because her
7 example was we have people testifying up here, and I have
8 seen that 150 times. I went through 150 cases for the
9 last three months trying to find a panel deposition.

10 It's the manner, that's the only thing that I'm
11 questioning, Chair, is the -- everybody keeps saying they
12 have done this before. Yes, you have done it up here
13 sitting at this desk. But a panel deposition, any example
14 would have been helpful to someone -- I'm a layperson, I
15 am not an attorney. And even as an attorney privilege,
16 you know, when you are talking to different attorneys,
17 generally if you want to cite a case, you will give the
18 example to the opposing counsel on that particular issue,
19 if someone has grave concerns about it.

20 So I might have been thrown out or motion to
21 dismiss, but it's the particular avenue. The way that the
22 Commission works is the only thing I could use as a
23 reference, so I hope you will bear with me on that.

24 **CHAIRMAN GRAHAM:** Ms. Larson, I have a question
25 for you. I guess I'm just trying to understand. And

1 granted I have not seen a joint deposition; I have seen
2 joint testimony up here. What do you think the prejudice
3 was for having a joint deposition? If they would have
4 done it separately, what would you have gained or what
5 would you have lost, I guess my question is.

6 MS. LARSON: I'm not quite sure, Chair, because
7 that opportunity was not given to me, but I was talking to
8 one -- it was Charles, probably, and I said, you know, if
9 this -- my frame of reference is only civil procedure,
10 DOAH procedures. You know, I was very honest about what
11 procedure -- when I have come before the Public Service
12 Commission, it has always been as a public concerned
13 citizen, never as an intervenor in a case. This is a new
14 thing for me, also.

15 But in any civil, Supreme, any proceeding, I
16 have never seen a panel deposition in my life. I
17 couldn't -- I asked everybody I ever knew. I went to
18 everybody. I called home, I called three different
19 states, "Have you ever heard of a panel deposition?" No.
20 That was the definitive answer every time. There was no
21 such thing in any procedure that anybody had ever seen.
22 So I guess I'm just trying to get that across to you that
23 it does seem -- because when you are on the phone it's
24 telephonic. You had to re-identify who it was. Even the
25 court reporter was having trouble, who said what, who's on

1 first. It is detrimental in a proceeding. That's all.

2 **CHAIRMAN GRAHAM:** Okay. All right. We are
3 going to enter into the record, it is Hearing Number 3, 4,
4 9, 12, and 13. And we are going to make sure that Ms.
5 Larson's objection to 4, and -- I guess just Number 4,
6 make sure that is noted.

7 **MR. MURPHY:** Thank you.

8 **CHAIRMAN GRAHAM:** Okay. Are we thumbs up? Are
9 we good? I think we are done with the witness. Sir,
10 thank you very much.

11 (Hearing Exhibits 3, 4, 9 marked and admitted,
12 and 12 and 13 admitted into evidence.)

13 And I believe we have one last witness.

14 **MR. COX:** Yes, Chairman Graham. FPL calls its
15 witness, Thomas Hartman.

16 **CHAIRMAN GRAHAM:** Let the record show Mr.
17 Hartman has already been sworn in.

18 **THOMAS HARTMAN**

19 was called as a witness on behalf of Florida Power and
20 Light Company, and having been duly sworn, testified as
21 follows:

22 **DIRECT EXAMINATION**

23 **BY MR. COX:**

24 Q. Mr. Hartman, would you please state your name
25 and business address for the record?

1 A. My name is Tom Hartman. The business address is
2 700 Universe Boulevard, Juno Beach, Florida 33408.

3 Q. Mr. Hartman, by whom are you employed and in
4 what capacity?

5 A. I'm employed by Florida Power and Light Company
6 as Director of Business Management in the Energy Marketing
7 and Trading Group.

8 Q. Mr. Hartman, did you cause to be prefiled 15
9 pages of Direct Testimony in this proceeding on
10 January 7th, 2011?

11 A. Yes, I did.

12 Q. Do you have any changes or revisions to your
13 Prefiled Direct Testimony?

14 A. I have three revisions to it.

15 Q. Could you please present those changes for the
16 record?

17 A. Certainly. The first revision is on Page 4,
18 Line 11, where we should replace the "phrase sometime in
19 the period between 2018 and 2025," with the phrase "in
20 2016." Similarly on Page 11, Line 17 through 19, replace
21 the phrase "sometime between 2018 and 2025, depending upon
22 a number of system planning assumptions which have not yet
23 been finalized," replace that with, "in 2016."

24 The last change is on Page 12, Lines 4 through
25 6, replace the phrase or the sentence "Analysis to date

1 shows that the proposed advanced capacity payments are
2 below the estimated designed cost of the electrical
3 components of the solid waste facility as provided by
4 SWA," should be replaced with, "FPL currently estimates
5 the designed cost of the electrical components of the
6 solid waste facility is below the present value of the
7 deferred capacity, and hence will establish the advanced
8 capacity payment."

9 Q. Thank you, Mr. Hartman. Do you have any other
10 changes or revisions to your prefiled testimony?

11 A. No, I do not.

12 Q. With the changes that --

13 COMMISSIONER EDGAR: Could I get -- I'm sorry.
14 That last change, the adding -- on Page 12 adding or
15 substituting the last sentence there in Lines 4 through 6,
16 could you read that one more time a little more slowly for
17 me?

18 THE WITNESS: Certainly, Commissioner.

19 COMMISSIONER EDGAR: Thank you.

20 THE WITNESS: The replacement is, "FPL currently
21 estimates that the designed cost of the electrical
22 components of the solid waste facility is below the
23 present value of the deferred capacity --

24 COMMISSIONER EDGAR: Below the present value
25 of --

1 **THE WITNESS:** Of the deferred capacity, and
2 hence will establish the advanced capacity payment.

3 **COMMISSIONER EDGAR:** Okay. Thank you very much.

4 **THE WITNESS:** Yes, ma'am.

5 **BY MR. COX:**

6 **Q.** So Mr. Hartman, just to be clear, do you have
7 any other changes or revisions to your prefiled testimony?

8 **A.** No, I do not.

9 **Q.** With the changes that you have discussed today,
10 if I were to ask you the same questions as contained in
11 your prefiled testimony today, would your answers be the
12 same?

13 **A.** Yes, they would be.

14 **MR. COX:** Chairman Graham, FPL would ask that
15 Mr. Hartman's prefiled direct testimony be inserted into
16 the record as though read.

17 **CHAIRMAN GRAHAM:** Let his prefiled testimony be
18 inserted into the record as though read.

19

20

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25

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2
3 **DIRECT TESTIMONY OF TOM HARTMAN**

4 **FOR**

5 **FLORIDA POWER & LIGHT COMPANY**

6 **IN RE:**

7 **MODIFICATION TO DETERMINATION OF NEED**

8 **AND**

9 **APPROVAL OF PURCHASE POWER AGREEMENT**

10

11 **Q. Please state your name and business address.**

12 A. My name is Thomas L. Hartman. My business address is 700 Universe Boulevard,
13 Juno Beach, Florida 33408.

14

15 **Q. By whom are you employed and what is your position?**

16 A. I am employed by Florida Power & Light Company ("FPL" or the "Company") as
17 Director of Business Management in the Energy Marketing & Trading Department.

18

19 **Q. Please describe your duties and responsibilities in that position.**

20 A. My current responsibilities include: providing analyses to determine whether and
21 on what terms to extend or replace expiring long term purchase power contracts;
22 evaluating and negotiating amendments to existing long term power purchase
23 agreements; negotiating new power purchase agreements; and assisting in the
24 development of draft purchase power agreements for future generation capacity
25 purchases.

26

1 **Q. Please describe your educational background and professional experience.**

2 A. I received a Bachelor of Science Degree in Mechanical Engineering and Aerospace
3 Sciences in 1974, and a Master's Degree in Mechanical Engineering in 1975 from
4 Florida Technological University. I received a Masters of Business Administration
5 degree from Georgia State University in 1985. I have been employed by FPL since
6 July 2003. From 1994 until joining FPL, I was employed by FPL's unregulated
7 affiliate, FPL Energy, LLC and its predecessor company. Throughout my
8 employment at FPL Energy, I held a number of positions in Business Management,
9 where I had responsibility for various unregulated power projects, including
10 responsibility for negotiating, administering, and modifying power purchase
11 agreements. Prior to joining FPL Energy, I was employed by a number of
12 consulting firms, providing management and technical consulting, which related to
13 construction and management of various types of renewable and non-renewable
14 power plants.

15

16 **Q. What is the purpose of your testimony?**

17 A. My testimony has two purposes. First, to address how the Expanded Facility meets
18 the need criteria in Sections 403.519, Fla. Stat., and 377.709, Fla. Stat., and
19 therefore should be granted a determination of need. Second, to address why the
20 Commission should approve the SWA/FPL contract for cost recovery.

21

22 **Q. Please summarize your testimony.**

1 A. In accordance with established Commission preference and consistent with
2 Appendix A of the Petition, SWA and FPL are negotiating a purchase power
3 agreement for the output of SWA's Expanded Facility which will benefit both SWA
4 and FPL's customers. SWA's Expanded Facility and the contract satisfy the
5 requirements stated in Section 403.519, Fla. Stat., because they will positively
6 impact FPL's system reliability and integrity through: the addition of firm capacity
7 during a period when FPL's system will have a capacity requirement; increased
8 fuel diversity and fuel supply reliability; reduced reliance on fossil fuels in the
9 production of electricity, and the addition of renewable generation on FPL's
10 system. In addition, the contract to purchase power from the Expanded Facility is
11 cost effective for FPL's customers, and the Expanded Facility provides substantial
12 environmental benefits.

13
14 The capacity and energy payments under the contract satisfy the requirements
15 stated in Section 377.709, Fla. Stat., for pre-funding of a Waste to Energy facility.
16 The capacity payment is not more than the net present value of FPL's avoided
17 capacity; the capacity payment is less than the design costs of the electrical
18 components of the Expanded Facility; and the energy payments are no greater than
19 the hourly incremental energy rates on FPL's system or the energy costs associated
20 with the avoided unit.

21
22 In summary, the Commission should approve FPL and SWA entering into the
23 contract, and should approve recovery of the costs associated with the contract

1 from FPL's customers. FPL's customers will benefit from this contract. FPL's
2 payments under the proposed contract are lower than FPL's full avoided cost,
3 resulting in a cost savings to the customers compared to the avoided unit.

4 **I. STATUTORY NEED CRITERIA**

5 **Q. How would approval of the SWA/FPL contract and SWA's construction of the**
6 **Expanded Facility affect FPL's system reliability and integrity?**

7 A. Upon completion of construction which is currently anticipated in late 2015, SWA
8 would be under contract to provide the output of the Expanded Facility as firm
9 capacity and energy to FPL until 2032. SWA's contracted performance would
10 enhance system reliability and integrity. At present, FPL projects a need for
11 additional firm capacity sometime in the period between 2018 and 2025, and the
12 capacity under this contract would contribute to deferring some of that capacity
13 requirement. Most importantly, however, this is a renewable energy project, with
14 an indigenous fuel source (MSW), which the Florida Legislature has sought to
15 encourage with the enactment of Section 377.709, Fla. Stat., as well as other more
16 recent statutory provisions. As such, it increases the diversity of FPL's energy
17 supply and increases FPL's system reliability and integrity through reduced
18 dependence upon fossil resources.

19
20 In addition, because under Section 377.709(4), Fla. Stat., the Expanded Facility
21 will need to operate at a minimum seventy percent (70%) capacity billing factor on
22 a twelve (12) month rolling average in order to retain the full amount of the
23 advanced capacity payment, the operator of the Expanded Facility will be very

1 motivated to ensure that the facility operates reliably. This will contribute to FPL's
2 electrical system reliability and integrity.

3

4 **Q. What, if any, effect would approval of the SWA/FPL contract and SWA's**
5 **construction of the Expanded Facility have on FPL's ability to provide**
6 **adequate electricity at reasonable cost?**

7 A. It would have a beneficial effect. The price at which FPL will purchase SWA's
8 firm capacity and energy under the SWA/FPL contract is less than FPL's avoided
9 cost. Simply stated, FPL's total cost under the SWA/FPL contract over the life of
10 the contract in terms of cumulative present value of revenue requirements
11 ("CPVRR") is less than the system cost would be absent the addition. Therefore,
12 construction of this Expanded Facility and the purchase of its output pursuant to the
13 SWA/FPL contract would enhance FPL's ability to provide adequate electricity at a
14 reasonable cost consistent with the cost effectiveness standard stated in Section
15 377.709(3)(b), Fla. Stat.

16

17 **Q. What, if any, impact would construction of the Expanded Facility and FPL's**
18 **purchase of the output of the Expanded Facility under the terms of the**
19 **SWA/FPL contract have on FPL's fuel diversity?**

20 A. It would improve FPL's fuel diversity because it would add up to 90 MW of base
21 load generating capacity using renewable fuel. With an estimated annual output in
22 excess of 500,000 MWh, it would substantially increase the quantity of renewable

1 generation in FPL's portfolio thereby reducing the consumption of natural gas and
2 other fossil fuels.

3

4 **Q. What, if any, impact would the construction of the Expanded Facility and**
5 **FPL's purchase of the output of the Expanded Facility under the terms of the**
6 **SWA/FPL contract have on FPL's fuel supply reliability?**

7 A. The SWA/FPL contract and FPL's purchasing the output of the Expanded Facility
8 will increase FPL's fuel reliability. Not only is there a plentiful quantity of MSW
9 fuel for the Facility, disposal of which is the fundamental reason the Expanded
10 Facility is needed by the County, but the source of the MSW is local not requiring
11 interstate or international transportation. In addition, purchasing energy under this
12 contract will reduce FPL's consumption of fossil fuels, which improves overall fuel
13 supply reliability.

14

15 **Q. Is the construction of the Expanded Facility and FPL's purchase of the output**
16 **of the Expanded Facility under the terms of the contract a cost effective**
17 **alternative for FPL?**

18 A. Yes. As earlier discussed, the SWA/FPL contract results in system cost savings on
19 a CPVRR basis over the life of the contract, including the impact of displacing
20 higher cost generation in the earlier years and recognizing the capacity cost benefit
21 of offsetting/deferring a portion of the capacity needs of the next avoided unit.
22 Additionally, and not reflected in these calculations, is the fact that the Expanded

1 Facility provides economic and environmental benefits to the customers of SWA,
2 most of whom are also FPL customers.

3

4 **Q. Are there sufficient cost-effective demand side management or conservation**
5 **options reasonably available to FPL to avoid the Expanded Facility?**

6 A. No. All cost effective, reasonably achievable DSM measures consistent with the
7 Commission's orders in FPL's DSM goals were recognized in the analysis of
8 resource options available to FPL as part of the evaluation of the purchase of
9 electrical output from the Expanded Facility. Compliance with these DSM goals
10 was reflected in calculating projected system costs both with and without the
11 SWA/FPL contract. In addition, as stated in the preamble to Section 377.709, the
12 Florida Legislature has determined that waste to energy facilities are themselves
13 effective conservation efforts. The SWA/FPL contract, therefore, would increase
14 FPL's effective conservation efforts.

15

16 **Q. What conclusion have you drawn from your review and analyses of the**
17 **Expanded Facility in relation to the applicable need criteria?**

18 A. I conclude that there is a need for the Expanded Facility. As noted, the Expanded
19 Facility meets every applicable need criterion under Florida law, including the
20 Florida Electrical Power Plant Siting Act ("PPSA") and is needed for the SWA to
21 carry out its solid waste disposal mandate in an efficient, cost-effective, and
22 environmentally beneficial manner. Therefore, FPL urges the Commission to grant

1 SWA's requested modification to determination of need for an increase of site
2 capacity up to an aggregate total of 168 MW.

3 **II. COST RECOVERY**

4 **Q. The Petitioners have also requested authorization for FPL to recover the costs**
5 **associated with the SWA/FPL contract. Please explain what the Petitioners**
6 **seek.**

7 A. The Petitioners are asking for Commission approval of the proposed SWA/FPL
8 contract and for FPL to be authorized to recover all costs that it incurs incident to
9 the contract through one or more of the Commission's established adjustment
10 clauses. The SWA/FPL contract qualifies as an advance funding program under
11 Section 377.709(3), Fla. Stat. By the terms of the statute, such a contract requires
12 prior permission of the Commission.

13
14 Additionally, the SWA/FPL contract will require as a condition precedent two
15 specific findings by the Commission. The first required finding sought by the
16 Petitioners is that the SWA/FPL contract is "reasonable, prudent, and in the best
17 interests of FPL's customers" consistent with the requirements of Section 377.709,
18 Fla. Stat. The second required finding sought by the Petitioners is that FPL be
19 allowed to recover costs incident to the contract through the Commission's
20 established adjustment clauses.

21
22 There are two types of costs associated with the contract: payments to SWA for
23 capacity and energy pursuant to the contract, and costs of administering the contract.

1 The Petitioners seek Commission approval for both types of contract costs to be
2 recovered from FPL's customers. The prefunded capacity payments and
3 administrative costs, consistent with Section 377.709, should be recovered from
4 FPL's customers pursuant to the provisions of the Florida Energy Efficiency and
5 Conservation Act ("FEECA") through the energy conservation cost recovery
6 ("ECCR") clause. FPL recommends that the energy payments that FPL makes to
7 the SWA under the contract should be recovered through the fuel and purchased
8 power cost recovery clause consistent with Commission practice.

9
10 **Q. What factors do the Petitioners ask the Commission to consider in reviewing**
11 **the proposed SWA/FPL contract under Section 377.709, Fla. Stat.?**

12 **A** Section 377.709(3)(b), Fla. Stat., states that the Commission is required to consider
13 two specific items in reviewing the contract. The Commission is to specifically
14 consider "the cost-effectiveness of the unit." The Commission is also instructed to
15 specifically consider "the financial ability of the electric utility to provide the
16 funding."

17
18 The Commission is also instructed under this statute not to approve any agreement
19 which violates any of five specific provisions. As I will discuss later in my
20 testimony, the SWA/FPL contract does not violate any of these five specific
21 provisions.

22

1 **Q. The first specific requirement for the Commission to consider under Section**
2 **377.709(3)(b) is “the cost-effectiveness of the unit.” Please address the cost-**
3 **effectiveness of the unit.**

4 A. The cost-effectiveness of the unit can be considered from both the perspective of
5 SWA and FPL. As stated in the testimony of Mr. Bruner and Mr. Pellowitz, SWA
6 considers the Expanded Facility to be its most cost-effective means of disposing of
7 MSW.

8

9 I have previously addressed whether the proposed unit under the terms of the
10 SWA/FPL contract is cost-effective to FPL. Simply put, the contract is less costly
11 than FPL’s self-build fossil generation alternative. The fact that the contract cost is
12 lower than FPL’s avoided cost demonstrates a cost benefit to FPL’s customers,
13 even without giving consideration to the significant economic benefits that would
14 be enjoyed by the citizens of Palm Beach County, most of whom are also FPL
15 customers.

16

17 **Q. The second specific requirement for the Commission to consider under Section**
18 **377.709(3)(b) is “the financial ability of the electric utility to provide the**
19 **funding.” Please address the financial ability of FPL to provide the funding**
20 **required under the SWA/FPL contract.**

21 A. The funding required of FPL under the SWA/FPL contract is a lump sum advanced
22 capacity payment. Section 377.709(3)(b)4, Fla. Stat., states that a utility is entitled
23 to recover from its customers costs associated with providing advanced funding to

1 entities such as the SWA for its Expanded Facility under the provisions of FEECA.
2 Specifically, FPL is entitled to recover “the amount of financing, including all
3 carrying costs, plus reasonable and prudent administrative costs incurred by the
4 electric utility”. With Commission authorization for recovery of these costs, FPL
5 can provide the needed funding to SWA.

6
7 **Q. Are the advanced capacity payments to SWA during the construction the**
8 **lesser of (a) the net present value of avoided capacity cost for FPL calculated**
9 **over the period of time during which the SWA contracts to provide electrical**
10 **capacity to FPL or (b) an amount which is no more than the design costs of the**
11 **electrical component of the Expanded Facility?**

12 **A.** Yes. Allow me to explain the advanced capacity payment under the proposed
13 SWA/FPL contract in more detail. FPL is currently conducting its Ten Year Site
14 Plan analysis. As part of this analysis, FPL will determine in early 2011 when it
15 will next need to build or procure additional generating capacity to meet its
16 expected system demand for energy and capacity. At the present stage of this
17 analysis, FPL has determined that it will need a new generating facility sometime
18 between 2018 and 2025, depending upon a number of system planning assumptions
19 which have not yet been finalized. In all cases, the assumed system addition is a
20 three on one combined cycle facility. For each generating in-service date
21 addressed, FPL determines the value of deferral associated with that unit’s capacity
22 (on a \$/kW-Month basis) from the in-service date of the avoided unit until the end
23 of the proposed contract. This provides a table of annual capacity payments earned

1 by the Expanded Facility for deferring additional capacity needs of FPL's
2 customers. This table of capacity values is then discounted back to the date that the
3 advanced capacity payment will be made to determine the appropriate pre-funding
4 of capacity that is available. Analysis to date shows that the proposed advanced
5 capacity payments are below the estimated designed cost of the electrical
6 components of the solid waste facility, as provided by SWA.

7

8 **Q. Under the SWA/FPL contract, will the energy payments to SWA be equal to**
9 **or less than the lesser of (a) the hourly incremental energy rates of FPL as**
10 **provided in its approved tariffs over the life of the contract or (b) the energy**
11 **costs associated with the avoided capacity costs of FPL?**

12 **A.** Yes. In determining the energy pricing under the SWA/FPL contract, we explicitly
13 considered this statutory requirement in Section 377.709. From the date when the
14 Expanded Facility comes into service until the later of the expected in-service date
15 of FPL's avoided unit or December 31, 2016, energy payments to the SWA unit
16 will be at 99% of FPL's hourly incremental energy rates. From the later of the
17 expected in-service date of FPL's avoided unit or December 31, 2016, until the end
18 of the contract term, energy payments will be the lower of the hourly "as-available"
19 energy rate or the energy costs of the avoided unit. Thus the contract terms comply
20 with the Section 377.709 statutory requirements.

21

22

1 Q. Is FPL currently providing electrical energy at retail within the geographic
2 area of Palm Beach County?

3 A. Yes.

4

5 Q. Do the Petitioners seek to recover the amount of financing, including all
6 carrying costs, plus reasonable and prudent administrative costs incurred by
7 FPL under the SWA/FPL contract from customers under FPL's ECCR
8 clause?

9 A. Yes, for several reasons. First, there is a statutory requirement for cost recovery
10 from a utility's customers upon Commission approval of a MSW advance funding
11 program under Section 377.709(3)(b)4, Fla. Stat. Second, this advance funding is
12 explicitly contemplated by the Legislature, and the proposed funding under the
13 SWA/FPL contract and associated cost recovery implements the various statements
14 of legislative intent in Section 377.709(1), Fla. Stat. Third, both the Commission
15 and the Legislature have found MSW facilities to be effective conservation
16 measures, and the ECCR clause is intended to enable recovery of a utility's
17 Commission-approved conservation measures. Fourth, the costs of this contract are
18 appropriately borne by the customers who derive the benefit of the contract. FPL's
19 customers would incur costs that are below FPL's avoided cost, reducing their cost
20 of electricity, and thus are simply paying for the benefit that FPL is securing for
21 them by entering into the contract.

22

1 **Q. Would the funding of the Expanded Facility cause or contribute to the**
2 **uneconomic duplication of electric facilities?**

3 A No, the proposed funding would not result in the uneconomic duplication of
4 facilities at any time. As discussed previously, this contract is cost-effective for
5 FPL's customers over the life of the contract. The payments under the proposed
6 contract are actually lower than FPL's avoided cost. There is nothing
7 "uneconomic" about this capacity addition. Moreover, as the Expanded Facility is
8 adding non-fossil, MSW-fueled renewable energy generating capability to FPL's
9 system; there is nothing "duplicative" about the capacity addition.

10

11 **Q. How and why should the costs paid to the SWA pursuant to the contract be**
12 **recovered?**

13 A. The contract is consistent with the statutory and Commission-established criteria
14 for authorization for cost recovery. The firm capacity and energy from the
15 Expanded Facility can reasonably be expected to contribute to the deferral or
16 avoidance of FPL's next planned fossil generating unit and to provide physical fuel
17 diversity as well as fuel price stability to FPL and its customers.

18

19 FPL proposes to recover the return on the advanced capacity payment ("ACP") and
20 administrative costs pursuant to the FEECA statute through the ECCR clause. FPL
21 recommends recovery through the ECCR because that clause is presently used for
22 recovery of the costs of conservation efforts, and the Legislature has declared in
23 Section 377.709(1), Fla. Stat., that solid waste facilities represent an effective

1 conservation effort. The ACP would earn a return at the overall clause rate of
2 return, commencing at the point that the ACP is made by FPL to the SWA. The
3 return would be calculated using a pretax rate of return applied to the advanced
4 payment during the construction period. Upon commercial operation of the
5 Expanded Facility, FPL would begin to amortize the ACP through the ECCR
6 clause on a straight line basis over the remaining term of the SWA/ FPL contract.
7 The unamortized balance of the ACP would continue to earn a return at the overall
8 clause rate of return until it is fully amortized.

9
10 The proposed SWA/FPL contract provides that FPL will pay SWA for electric
11 energy at 99% of FPL's tariffed hourly incremental energy rates from the date
12 when the Expanded Facility comes into service until the later of the expected in-
13 service date of FPL's avoided unit or December 31, 2016, at which time FPL will
14 begin to pay SWA the lesser of FPL's tariffed hourly incremental energy rates and
15 the energy costs associated with FPL's avoided capacity costs. As such, FPL's
16 energy payments will be consistent with the requirements under Section
17 377.709(3)(b)2, Fla. Stat. As a result, the Commission should authorize recovery
18 for the energy payments under the proposed contract through the fuel and purchase
19 power clause, consistent with Commission practice for FPL's existing purchased
20 power agreements.

21
22 **Q. Does this conclude your direct testimony?**

23 **A. Yes.**

1 BY MR. COX:

2 Q. Mr. Hartman, have you prepared a summary of your
3 prefiled direct testimony?

4 A. Yes, I have.

5 Q. Mr. Hartman, would you present your testimony
6 summary at this time to the Commission?

7 A. Certainly.

8 Good morning, Commissioners. SWA and FPL are
9 asking this Commission for three things: To affirm a
10 determination of need for the SWA expanded facility; to
11 approve the contract negotiated between FPL and SWA; and
12 to allow FPL to recover the cost of this contract from our
13 customers.

14 SWA's expanded facility and the contract meet
15 the requirements of the need determination statute. It
16 will positively impact FPL's system reliability and
17 integrity through the addition of firm capacity during a
18 period when FPL projects our system will have a capacity
19 requirement, the increased fuel diversity and fuel supply
20 reliability, the reduced reliance on fossil fuels in the
21 production of electricity, and they add renewable
22 generation on FPL's system.

23 In addition to the substantial environmental and
24 economic benefits to SWA discussed by the earlier
25 witnesses, the contract to purchase power from the

1 expanded facility is cost-effective for FPL's customers.
2 The proposed contract saves our customers money. Their
3 electrical bills will be lower with your approval of this
4 contract.

5 The contract has many features in common with
6 typical renewable energy contracts previously brought
7 before and approved by this Commission. The contract
8 pricing is derived from FPL's next avoidable fossil
9 generation unit. Energy pricing, for example, is below
10 FPL's avoided cost until the in-service date of FPL's next
11 avoided unit, and from then it is the energy cost
12 associated with the avoided unit.

13 The contract also has some unique features. It
14 revolves around Section 377.709, Florida Statutes, which
15 is targeted specifically at the circumstances of this
16 docket, a new government owned waste-to-energy facility.
17 377.709 allows for an advanced capacity payment from the
18 utility to the waste facility owner to assist in paying
19 for the electrical components of the facility which is
20 commonly referred to as the power block, and is part of
21 SWA's proposed expanded facility that will generate the
22 electricity that comes from the incineration of solid
23 waste. This advanced capacity payment is the lower of the
24 value to our customers of the capacity provided by the
25 facility or the cost of the power block.

1 Additionally, since this is an up-front payment,
2 FPL will finance the payment through our balance sheet.
3 In this manner, our customers payment for the capacity in
4 the contract more closely ties to when they receive the
5 benefit of that capacity.

6 Additionally, 377.709 states that a
7 waste-to-energy facility is a conservation measure, so
8 cost-recovery by the utility is through the Energy
9 Conservation Cost-Recovery Clause rather than through the
10 capacity clause. Most importantly, we know the contract
11 will be cost-effective for our customers. Analysis
12 performed and presented in discovery also demonstrate that
13 throughout the range of avoid values the contract is
14 always cost-effective for our customers.

15 In summary, the Commission should approve FPL
16 and SWA entering into the contract and should approve
17 recovery of the costs associated with the contract from
18 FPL's customers. FPL's customers will benefit.

19 **MR. COX:** Thank you, Mr. Hartman.

20 Mr. Hartman is available for cross-examination.

21 **CHAIRMAN GRAHAM:** Ms. Larson.

22 **CROSS EXAMINATION**

23 **BY MS. LARSON:**

24 **Q.** Good morning, Mr. Hartman.

25 **A.** Good morning.

1 Q. Football field. I just have a few questions.
2 Hopefully it won't be too bad.

3 FPL did not include the Solid Waste Authority
4 expanded facility in their 2010 Ten-Year Site Plan,
5 correct?

6 A. That's correct, Ms. Larson, we did not.

7 Q. But the 2011 -- you know, why wasn't it included
8 in the 2010 Ten-Year Site Plan?

9 A. During each of our ten-year site plans, we focus
10 on meeting the needs of our customers in the most
11 cost-effective way. One of the things we look at is
12 purchased power, like the SWA contract. At the time of
13 our Ten-Year Site Plan, when we have to plan on meeting
14 our load requirements, we did not have an SWA contract, we
15 were not in negotiations for one, and one couldn't be
16 identified at that time. As of our 2011 filing, which
17 occurred April 1st of this year, obviously we were well
18 along with the negotiations. We had already filed with
19 this Commission. At that point the contract was
20 identified in the Ten-Year Site Plan as a resource our
21 customers could rely upon.

22 Q. The 2010 -- sorry, I apologize. The 2011
23 Ten-Year Site Plan was filed months after the petition.
24 Do you -- I'm trying to phrase this -- sorry.

25 **CHAIRMAN GRAHAM:** Take your time.

1 Q. (Continuing) FPL has filed the 2011 Ten-Year
2 Site Plan as of April 1st --

3 A. Yes, ma'am.

4 Q. -- but FPL was aware -- FPL was aware of the
5 Solid Waste Authority expanded facility -- when was FPL
6 first aware of the Solid Waste Authority's expanded
7 facility?

8 A. FPL has been aware since 2009 that SWA was at
9 least considering this, but let me point out that SWA also
10 had the right to not contract at all, contract with a
11 different utility. We put in our Ten-Year Site Plan
12 contracts that we are reasonably comfortable can meet our
13 customers needs.

14 Q. The fact that the 2011 Site Plan was filed
15 months after the petition, does that compromise the
16 contract in any way?

17 A. I don't believe so, no.

18 Q. Did FPL magically invent the need for this to
19 exist, the Solid Waste Authority expanded facility?

20 A. Not to the best of my knowledge. We have a
21 defined need that is disclosed in our 2011 Ten-Year Site
22 Plan for additional generation in the 2016 time frame.

23 Q. Mr. Hartman, could you please look at the FPL
24 response in the Interrogatory Number 4 correction? Do you
25 have a copy of that by any chance?

1 A. I probably do. Yes, I've got it in front of me.

2 Q. Okay. The FPL response states, "There is no
3 measurable capacity benefit from the Solid Waste Authority
4 because FPL's resource plan would not change as a result
5 of this purchase," correct?

6 A. That's what the response is. You need to
7 carefully go back, though, and read what the question was.
8 The question was, "If capacity and energy from SWA falls
9 below expectations, how will FPL make up the loss of
10 load?"

11 And if the contract falls below our
12 expectations, we will not have a loss of load. So in
13 answer to that, it is a perfectly appropriate answer. We
14 don't have a loss of load due to this contract.

15 Q. Mr. Hartman, if you could please look at FPL's
16 response shown in Interrogatory Number 10 correction. I
17 have a copy, if you need it.

18 A. Yes.

19 Q. Do you have it?

20 A. Yes, I have it in front of me.

21 Q. I have copies. FPL intends to capitalize the
22 advanced capacity payment made to the Solid Waste
23 Authority, correct?

24 A. Yes, we do.

25 Q. So will FPL profit from its ratepayers by

1 purchasing excess capacity that has no measurable capacity
2 benefit?

3 A. No, ma'am. This contract has a capacity
4 benefit. This contract has capacity that does benefit our
5 customers, and it clearly is not excess capacity. It's
6 providing reliability and renewable power to our
7 customers. Also, the contract is cost-effective for our
8 customers and reduces their bills.

9 Q. All right. It's hard for a layman -- I'm sorry,
10 I apologize, but it's hard for a layman to understand
11 charging us money to save us money. If you could please
12 look at the FPL response shown in Interrogatory Number 18,
13 supplemental?

14 A. For whatever reason, I don't appear to have that
15 one with me.

16 MS. LARSON: I have copies for everyone. Do I
17 give it to the clerk?

18 CHAIRMAN GRAHAM: Staff will get it from you.

19 MS. LARSON: I think there's enough.

20 THE WITNESS: Okay, I've got it now.

21 MS. LARSON: Does everybody have it?

22 CHAIRMAN GRAHAM: Hold on just a second, Ms.
23 Larson.

24 MS. LARSON: Sorry.

25 CHAIRMAN GRAHAM: And thank you for providing

1 this for us.

2 MS. LARSON: I tried to have copies of
3 everything. Are we okay now?

4 CHAIRMAN GRAHAM: Yes, ma'am.

5 BY MS. LARSON:

6 Q. Okay. Mr. Hartman, FPL has no need for the
7 capacity from the Solid Waste Authority expanded facility
8 as the FPL summer reserve margins shown in the last column
9 are more than adequate without the Solid Waste Authority
10 contract through 2025, correct?

11 A. No, ma'am. That's a misunderstanding of the
12 situation. FPL has an identified need for an additional
13 unit in 2016. That's called an avoidable unit. A
14 renewable generator or qualified facility is entitled to
15 the value of that capacity.

16 The reason why that disappears and you look at
17 margins over 20 percent is two-fold. Number one, we have
18 added the SWA contract which, of course, comes in first
19 and is offsetting some quantity of the load. The second
20 thing is our avoided unit is a 3-on-1 H technology
21 combined cycle with about 1,200 megawatts, which is much
22 bigger than our need in that particular year. If you were
23 to go to your interpretation of it, there would never be
24 an avoided capacity, because typically we add new units in
25 very large lumps. So as time goes on, we always remain

1 above 20 percent. The fact is the SWA contract is meeting
2 90 megawatts of the need identified in 2016.

3 Q. I'm sorry, that is one of those -- I'm sorry,
4 Mr. Hartman, that is one of those moving targets I was
5 worried about, because the megawatt question has been a
6 moving target in this particular hearing, the 90 percent.

7 MR. COX: Chairman Graham, just an objection to
8 the fact that she appears to be testifying at this point
9 and not asking a question.

10 MS. LARSON: I'm going to go to my next
11 question.

12 CHAIRMAN GRAHAM: Please, Ms. Larson.

13 BY MS. LARSON:

14 Q. I am trying to wrap my arms around your
15 testimony, Mr. Hartman. The summer reserve margins are
16 not above 20 percent if the SWA contract was not included.

17 A. If we did not have the SWA contract, and we did
18 not build our avoided unit in 2016, the summer reserve
19 margins would be below 20 percent.

20 Q. All right. If you could please look at the FPL
21 response shown in Interrogatory Number 15, second
22 supplemental.

23 CHAIRMAN GRAHAM: Staff, can you get that passed
24 out, please?

25 THE WITNESS: Yes, I've got it.

1 **CHAIRMAN GRAHAM:** Go ahead, Ms. Larson.

2 **MS. LARSON:** I just wanted to make sure
3 everybody had their copies.

4 **BY MS. LARSON:**

5 **Q.** Based upon the FPL response, the average rate
6 impact resulting from the advanced capacity payment would
7 be \$8.52 if the payment were recovered in a single year,
8 is that correct?

9 **A.** That is correct.

10 **Q.** So FPL is requiring its ratepayers to pay for
11 excess capacity that is not required?

12 **A.** No, ma'am, that is not correct. First of all,
13 FPL is not proposing that it all be recovered in one year.
14 We have proposed that we recover as the customers receive
15 the value of the capacity. The contract runs through
16 2032, or potentially 2034, but in either case we have
17 recommended that the contract be amortized and that
18 payment recovered over the same time that the energy and
19 capacity is delivered, not in one lump. Secondly --

20 **Q.** Oh, that was a year. I'm sorry, I should
21 have --

22 **A.** Secondly, the capacity is needed by our
23 customers.

24 **Q.** Mr. Hartman, could you please direct me to the
25 exact page and lines of your prefiled direct testimony

1 that addresses the specific amount of advanced capacity
2 payment that FPL will make to SWA?

3 A. I would refer you to the question and the answer
4 on Page 11, starting at Line 7 of my prefiled direct
5 testimony.

6 MS. LARSON: Does anybody have a copy of that?
7 Is it in this bound, Charles?

8 BY MS. LARSON:

9 Q. Could you repeat, Mr. Hartman, please? I'm
10 sorry.

11 A. I would refer you to Page 11, Line 7, of my
12 Prefiled Direct Testimony, the question and the answer.

13 Q. Once again, you're referring to the 2011
14 Ten-Year Site Plan?

15 A. I'm sorry, I don't understand the question.

16 Q. Okay. Your statement is FPL is currently
17 conducting its Ten-Year Site Plan analysis.

18 A. Your question was, if I understand it, where I
19 put in my testimony what the advanced capacity payment was
20 going to be. This question and its answer describe the
21 process to develop the advanced capacity payment and the
22 basis for it.

23 Q. Bear with me. The Solid Waste Authority, the
24 facility is based -- bear with me, Mr. Hartman. I'm
25 trying to wrap my arms around the numbers here. It was

1 not in the 2010 Ten-Year Site Plan, but this was added
2 into the 2011 Ten-Year Site Plan?

3 A. In the 2011 Ten-Year Site Plan we identify the
4 SWA contract as one of the resources that we expect to be
5 available to meet our customers' capacity needs, yes.

6 Q. Mr. Hartman, have you reviewed the SWA, Solid
7 Waste Authority, response to the Staff Interrogatory 25F?

8 A. No.

9 Q. Would you like a copy? (Pause.)

10 A. I have a copy in front of me now.

11 Q. Okay. Would you like to read it and get
12 familiar with it for a moment?

13 A. I'm familiar with it.

14 Q. Okay.

15 CHAIRMAN GRAHAM: Ms. Larson, if you could ask
16 your question again.

17 MS. LARSON: I had asked if he wanted to have a
18 moment to read it and get --

19 CHAIRMAN GRAHAM: No, no. What was the question
20 before that?

21 MS. LARSON: Okay. I'm going there.

22 BY MS. LARSON:

23 Q. Would you agree that the Solid Waste Authority
24 response to Staff Interrogatory 25F stated that the cost
25 of design for the electrical component of the Solid Waste

1 Authority expanded facility is only \$1.65 million?

2 A. No, ma'am, I would not. I would agree that what
3 the SWA said here is the cost of design, meaning the
4 engineering fees and professional charges for the design
5 of the electrical component system of the expanded
6 facility, is now \$3.298 million.

7 Q. All right. This is my last question, so I will
8 try to -- Mr. Hartman, you would agree -- all right,
9 because there is two numbers here now, and I apologize,
10 Mr. Chair. You would agree that 1.65 million to
11 \$3.29 million amount is substantially less than the
12 \$60 million that FPL expects its ratepayers to pay in an
13 advanced capacity payment equal to the full cost of the
14 power block?

15 A. I would agree that they are two entirely
16 different things and, therefore, have two entirely
17 different numbers.

18 MS. LARSON: Okay. Thank you.

19 CHAIRMAN GRAHAM: Thank you, Ms. Larson. Staff.

20 MR. MURPHY: Mr. Chair, we have a large amount
21 of questions. Would it be appropriate to take five
22 minutes before we start?

23 CHAIRMAN GRAHAM: Hold on. Ms. Larson, please.

24 MS. LARSON: I apologize, Mr. Chair. We have to
25 either leave our hotel or say we are staying at 1:00

1 o'clock, and I didn't know what your time frame was today.
2 Do you take lunch usually?

3 **CHAIRMAN GRAHAM:** I was going to say, depending
4 on what staff was just going to say, that we could
5 probably break for lunch now and reconvene about 1:30.

6 **MS. LARSON:** Okay. Then I'm going to go back to
7 my hotel and stay another night. I just wanted to -- you
8 know, if it's going to be -- it's going to be lengthy?

9 **MR. MURPHY:** It's not going to be short.

10 **MS. LARSON:** Okay. All right. I apologize. I
11 just had to tell them am I staying or am I going.

12 **CHAIRMAN GRAHAM:** No, no, that's fine. That's
13 fine. Like I said, we are in no rush here, and our goal
14 here is to get as much as we can on the record and make
15 sure that everybody is comfortable when we walk out of the
16 door.

17 **MS. LARSON:** Thank you.

18 **CHAIRMAN GRAHAM:** So, Staff, if you have got
19 quite a bit, we will just go ahead and we will take a
20 break for lunch. We will go ahead and break now, and we
21 will reconvene at -- let's make it 1:15. We will
22 reconvene at 1:15. Is there any problem with that from
23 anybody? Okay. Then we are on recess until 1:15.

24 Thank you.

25 (Lunch recess.)

1 **CHAIRMAN GRAHAM:** Okay. I think we need to
2 reconvene Docket 110018-EU. We have -- Mr. Hartman is on
3 the witness stand. He's already been sworn. And we are
4 in cross-examination by PSC staff. So, Staff, you guys
5 are up.

6 **COMMISSIONER BROWN:** Mr. Chairman, would it --
7 or possibly Ms. Helton, would it be more prudent to have
8 the witness re-sworn in since we're reconvening?

9 **MS. HELTON:** That's a great question, but that's
10 not our practice. We consider once a witness has been
11 sworn, and usually we try to have, swear all the witnesses
12 that are present at the beginning of the hearing at one
13 time so it doesn't take up time during the day. Once they
14 have been sworn, we don't typically swear them in again
15 either for direct or for rebuttal testimony.

16 **COMMISSIONER BROWN:** Thank you.

17 **CHAIRMAN GRAHAM:** Ms. Edgar.

18 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

19 I have just a couple of questions for this
20 witness. Would it be okay if I jump in in front of
21 Mr. Murphy?

22 **CHAIRMAN GRAHAM:** Sure. I don't think he'll
23 mind.

24 **MR. MURPHY:** I believe that Ms. Rule had a
25 preliminary question.

1 MS. RULE: I'm sorry.

2 COMMISSIONER EDGAR: That's okay.

3 MS. RULE: Our witnesses Mr. Bruner and
4 Mr. Pellowitz have a plane to catch a little later, and we
5 were wondering, if it would be okay, if you would excuse
6 them.

7 CHAIRMAN GRAHAM: Board? I think as far as I
8 know we're done with the first two witnesses.

9 COMMISSIONER EDGAR: It's okay with me.

10 MS. RULE: Thank you.

11 CHAIRMAN GRAHAM: They're excused. Get out.

12 (Laughter.)

13 Commissioner Edgar.

14 COMMISSIONER EDGAR: Okay. Thank you.

15 Good afternoon. And I know that, that a couple
16 of questions I'm going to ask you are probably pretty much
17 covered in your prefiled testimony and also probably in
18 additional questions that you have answered and maybe are
19 about to answer. But sometimes it helps me to pose a
20 question in my own words, so I apologize if it's somewhat
21 redundant.

22 The first question is realizing that the
23 capacity costs, under the request that is before us the
24 capacity costs would be flowing through the conservation
25 clause and the energy costs through the fuel clause, what

1 is the estimated dollar impact on a typical residential
2 bill?

3 **THE WITNESS:** Let me go ahead and see. I think
4 we have one of the interrogatories --

5 **COMMISSIONER EDGAR:** Okay.

6 **THE WITNESS:** -- that went back exactly to that
7 point. And I'm sure it doesn't apply just to a
8 residential bill, but there was an interrogatory that
9 addressed on an average sort of bill for the company.

10 (Pause.)

11 **MR. MURPHY:** Chairman Graham, we believe that
12 this is the answer to 15 and 99.

13 **THE WITNESS:** It might well be. 99 appeared to
14 be just the advanced capacity payment, but 15 -- no, both
15 15 and 99 are just the advanced capacity payment. It
16 doesn't include the impact of the fuel savings. So I will
17 have to get back to you. We looked at it on an overall
18 basis. Okay? Probably -- and I can't tell you offhand
19 what the average would be per customer.

20 There's one response, which is 86H, that
21 summarizes the net present value of all the various
22 analysis we've done. And you've heard earlier,
23 Commissioner, that there's an issue of numbers moving in
24 various capacities and everything else. So thankfully,
25 although it didn't necessarily seem so at the time, Staff

1 has run us through every possible scenario under the
2 contract, and 86H summarizes the savings for the customers
3 on a net present value basis. So --

4 MR. COX: Commissioner.

5 THE WITNESS: Yes.

6 MR. COX: Commissioner Edgar, if it would be
7 helpful, we have copies of 86H that we could pass out.
8 It's included in the Staff exhibit, but we have copies of
9 the one page.

10 COMMISSIONER EDGAR: Yes, please. If that's
11 okay, Mr. Chair.

12 CHAIRMAN GRAHAM: That's fine.

13 THE WITNESS: So 86H looks at capacity from
14 45 megawatts, which is the minimum under the contract, to
15 90 megawatts, which is the maximum under the contract, and
16 it looks at capacity factors of the unit from 70 percent,
17 which is the minimum it can be, to 85 percent, which is
18 what we've seen historically with their existing unit, and
19 the savings range from a minimum of \$4 million to the
20 customers to expected numbers of about \$67 million.

21 And Ms. Larson had asked about 2010 versus 2011
22 Ten-Year Site Plans. So in 2010 our avoided unit was a
23 2025 unit, and compared to that unit the contract saves
24 \$17 million minimum, \$55 million maximum. So under every
25 scenario and combination of avoided unit allowed by the

1 contract it produces savings for our customers.

2 **COMMISSIONER EDGAR:** But you do not have the
3 computation in front of you or that you can put your hands
4 on right now as to the portions that would be flowing
5 through the clause and what -- you know, and I'm not sure
6 that it's always useful, but for comparison purposes in
7 many of our proceedings, you know, we use the typical
8 average residential bill at 1,200 megawatts kind of for
9 cost comparisons and to have a feel for impact. And so I
10 guess that's kind of the way I was trying to phrase the
11 question. But if you, if you don't have that computation
12 with you, I understand.

13 **THE WITNESS:** I'm pretty sure that we have it.
14 I just can't find it right now in this pile.

15 The one problem we have with going with a
16 typical residential profile is the combination of the
17 allocation of the costs among the various rate classes
18 changes over time.

19 **COMMISSIONER EDGAR:** Right.

20 **THE WITNESS:** So we projected the advanced
21 capacity payment using what is going on here, okay, what
22 it is in 2013, or that's as far as we have a projection.
23 There is, is a table, and I cannot recall which
24 interrogatory it's to, but it basically looks at the
25 overall cost and it divides it up on 1,200-kilowatt hours

1 per month, not paying attention to which rate classes get
2 it. So it's just kind of a typical customer. If we can't
3 find it, you know, I'm sure that --

4 COMMISSIONER EDGAR: Maybe while Mr. Murphy is
5 asking questions, your counsel can help draw our attention
6 to it. And certainly the impact on all classes is of
7 interest to us, but, again, just by way of keeping in mind
8 from issue to issue, having that residential is, is
9 sometimes useful.

10 And I'm going to go on then to my next question.
11 The --

12 THE WITNESS: Excuse me, Commissioner.

13 COMMISSIONER EDGAR: Yes.

14 THE WITNESS: Now that you've decided to go on,
15 I found it. It's interrogatory number 54. And the last
16 column indicates in that there's a differential system
17 average customer bill for 1,200-kilowatt hours.

18 COMMISSIONER EDGAR: Okay.

19 THE WITNESS: The first couple of years it's
20 plus, plus 6 cents. The last couple of years we're in the
21 middle, it's 13, 14, 15 cents.

22 COMMISSIONER EDGAR: And is that per month?

23 THE WITNESS: I believe that is per -- let's
24 see. I don't know. I will have to check.

25 COMMISSIONER EDGAR: Okay. So I guess my

1 question there would be for those, the 6 cents, did you
2 say 13 or 14 cents, and then is that per month or per year
3 would be my next question?

4 **THE WITNESS:** Looking at the number, it would
5 be, it would be per month.

6 **COMMISSIONER EDGAR:** Okay. Okay.

7 **THE WITNESS:** You know, subject to check. And
8 if I'm wrong, it will immediately get back to you.

9 **COMMISSIONER EDGAR:** Okay. I understand. And
10 thank you for continuing to dig there and work with me.

11 Okay. Then moving on to my next question, which
12 is realizing you have said in your testimony that the
13 purchase of megawatts from the proposed expanded facility
14 will increase the renewable generation portion of the FPL
15 fuel portfolio, so with that statement in mind, what is
16 the current percentage of the, which numbers I know we
17 have but I don't have them in front of me, what is the
18 current percentage of the portfolio that is renewable?
19 And if biomass is a portion of the renewable, how much is
20 renewable and what portion of that in whichever way is
21 best to determine it would be biomass? And then the
22 question that flows from that would be what is the
23 increase in that either biomass and/or renewable portion
24 of the fuel portfolio, what is the increase of that from
25 this proposed facility, if indeed it is to go forward?

1 **THE WITNESS:** Again, it's one of the ones that
2 most of your answer is, is covered in the interrogatories,
3 and I'll try and dig out exactly which one it is.

4 The vast majority of the renewables on FPL's
5 system in terms of -- well, in terms of firm capacity,
6 it's almost entirely biomass. In terms of just overall
7 energy, the vast, vast majority of it is biomass, and the
8 majority of that is waste-to-energy. The biggest
9 renewable provider to our system is Solid Waste
10 Authority's existing facility. It's base loaded
11 55 megawatts and produces that around the clock.

12 (Pause.)

13 **MR. MURPHY:** Chairman, sorry. Staff thinks that
14 it may be 55 and 56, if that's helpful.

15 **THE WITNESS:** It is indeed. It doesn't
16 differentiate between what is biomass and what is the
17 other. But actually I think we've filed in the Ten-Year
18 Site Plan some information also that goes to exactly the
19 question you're asking.

20 **COMMISSIONER EDGAR:** Uh-huh.

21 **THE WITNESS:** But as you can see, our current
22 renewable is on the order of 1 percent. And without SWA,
23 come 2016, for example, or use 2017, it would be
24 1.2 percent. And --

25 **COMMISSIONER EDGAR:** You say 1.2 percent with or

1 without the addition of this new facility?

2 **THE WITNESS:** Without the addition of this one.

3 **COMMISSIONER EDGAR:** Okay.

4 **THE WITNESS:** And in 2017, with the addition
5 it's 1.7 percent of our total system fuel mix.

6 **COMMISSIONER EDGAR:** That's exactly the answer I
7 was looking for. I didn't know what the number was, but
8 that, that's what I was trying to find out. Thank you.

9 Then moving on, the, and as, as has been talked
10 about previous to this and certainly today, recognizing
11 that as this project has developed some of the numbers
12 have changed and evolved, where we sit today, what is the
13 amount of the advanced capacity payment?

14 **THE WITNESS:** The advanced capacity payment as
15 of today is \$56.6 million.

16 **COMMISSIONER EDGAR:** And what is the cash source
17 of that \$56.6 million?

18 **THE WITNESS:** We'll take it from our balance
19 sheet.

20 **COMMISSIONER EDGAR:** Realizing that that amount
21 would be amortized, what is the return that will be
22 collected from customers on that advanced payment amount
23 for the percentage of that return?

24 **THE WITNESS:** There's two ways of looking at
25 that. One is basically what's the cost, okay? And it's

1 our overall cost of capital used for the clauses, which is
2 7.293 percent.

3 COMMISSIONER EDGAR: Okay. Thank you. Thank
4 you.

5 CHAIRMAN GRAHAM: Thank you, Commissioner Edgar.
6 Staff?

7 MR. MURPHY: Thank you.

8 CROSS EXAMINATION

9 BY MR. MURPHY:

10 Q Mr. Hartman --

11 A Yes, sir.

12 Q -- I'm Charlie Murphy for the Commission Staff.

13 If we could start by going over the exhibit
14 list. It's a big tall pile, so we didn't drag it over
15 there, but maybe you'll recognize them from the list.

16 Are you familiar with hearing Exhibit 5, which
17 is a composite exhibit consisting of various FPL responses
18 to interrogatories and requests for production of
19 documents?

20 A Yes, I am.

21 Q And how are you familiar with it?

22 A The response to the interrogatories were either
23 done by myself or done by my request, and I certainly
24 reviewed them all.

25 Q Thank you. And similarly for Exhibit 10, are

1 you familiar with that?

2 A Yes, I am. And it's the same, same answer. I
3 was either doing them or they were being done at my
4 request, and I did review all of them.

5 Q Thank you. Are you familiar with hearing
6 Exhibit 11, which is a confidential exhibit related to
7 FPL's fuel forecast?

8 A Yes, I am.

9 Q Were you similarly involved in preparing that?

10 A That was prepared at my request, and I did
11 review it.

12 Q Okay. Are you also familiar with hearing
13 Exhibit 6, which includes the, FPL's 2010 and 2011
14 Ten-Year Site Plans?

15 A Yes, I am.

16 Q And how are you familiar with those?

17 A I've certainly reviewed it, and I had a small
18 input into some minor areas of it.

19 Q And, finally, are you familiar with hearing
20 Exhibit 7, which is a transcript of Staff's deposition of
21 a panel in this case?

22 A Yes, I am.

23 Q Understanding that it was a panel deposition,
24 are you able to answer questions related to the
25 information included in Exhibit 7?

1 A Yes, I am.

2 Q Is the information in the exhibits related to
3 your prefiled testimony in this case?

4 A Yes, it is.

5 Q Does it provide data related to the case?

6 A Yes, it does.

7 Q Does it provide an overview related to the case?

8 A Yes, it does.

9 Q Background and context for the case?

10 A Yes.

11 Q With the understanding that the information has
12 become more specific over time, does the information in
13 the exhibits as updated reflect the position of FPL in
14 this case?

15 A Yes, it does.

16 Q Thank you. Did FPL initially project a need for
17 additional capacity between 2018 and 2025?

18 A FPL's last formal projection of need -- well,
19 the most recent one is of course 2016. Our last formal
20 projection of need was with our 2010 Ten-Year Site Plan,
21 which was 2025. During the period of time between that
22 Ten-Year Site Plan and the other, ongoing work indicated
23 that we may expect one between 2018 and 2025.

24 Q And you now project a need for 2016?

25 A That's correct.

1 Q Can you go in a little bit to what changes have
2 resulted in this change from '18 to '25 to '16?

3 A There's a couple of overall changes. Number one
4 is of course our load changes from year to year slightly.
5 A 1 percent change in our load forecast makes a difference
6 of a couple hundred megawatts. So that has changed in a
7 moderate fashion.

8 One of the other differences is that we had
9 earlier anticipated bringing some units that were in
10 inactive reserve back into service later on. Ongoing work
11 indicates that it is more cost-effective for us to not
12 bring those units back and to instead build a new, more
13 efficient combined cycle unit.

14 Q Was there also an issue with a 350-megawatt
15 plant that was scheduled for maintenance?

16 A It's not a single, single plant. In the past we
17 have always tried to schedule -- the peak month we look at
18 is August, and we had assumed in the most recent past that
19 we would be doing no maintenance on our units during that
20 month.

21 We've developed a fairly large fleet of combined
22 cycle gas turbines, and those units have to be brought
23 down and maintained when they have to be brought down and
24 maintained. It's based on fired hours. So based on that,
25 we believe that we will have about a 350-megawatt loss in

1 available capacity of our fleet due to maintenance on
2 those gas turbines.

3 Q And with respect to the cost-effectiveness of
4 bringing units back online, is, is that an ongoing process
5 of evaluation when or if you would do that?

6 A It's always an ongoing process with FPL until we
7 make a final decision, we've come in here and filed. But
8 we'll continue to update our forecast and analysis to do
9 the best we can. Right now our estimate is that it's more
10 cost-effective to build the 2016 unit.

11 Q And so the 2011 Ten-Year Site Plan does not
12 anticipate them coming back?

13 A That's correct.

14 Q Do you also have a purchased power contract with
15 Southern Company and St. Johns River Power Park?

16 A Yes, we do.

17 Q Have you renewed them or will you renew these
18 contracts?

19 A We have not renewed them as of now. We'll
20 certainly evaluate renewing them. The Southern Company
21 contract had a provision that it could have been extended.
22 At the time we analyzed it, expiration of that, that
23 option, at the time we analyzed it, it was not
24 cost-effective to bring it back. We'll certainly continue
25 to review as to where we can be and, you know, alternative

1 sources of power that are best for our customers.

2 Q If you were able to negotiate an extension of
3 one or both of those, would it affect the need for the
4 avoided unit?

5 A It potentially could. If we, if we could
6 negotiate firm contracts at more favorable terms for our
7 customers and it avoids a unit for a year, we would
8 certainly do that.

9 Q Will approval of the contract between SWA and
10 FPL add additional capacity to FPL's southeast Florida
11 area?

12 A Yes, it shall.

13 Q Will this enhance system reliability?

14 A Yes, it will.

15 Q This is related a little bit to what
16 Commissioner Edgar was asking about, but has FPL
17 calculated the rate impact of the advanced capacity
18 payment if it were recovered from FPL's customer in the
19 first year and not amor, amor -- easy for me to say --
20 amortized -- I'm not going to be able to say it --
21 throughout the contract term?

22 A Yes, we have.

23 Q Was a residential rate impact on a
24 1,200-kilowatt-hour bill 71 cents per month or \$8.52 per
25 year?

1 A That's correct. Yes, it was.

2 Q Is this amount roughly comparable to the rate
3 impact for FPL's solar projects?

4 A It is roughly comparable to one year's cost of
5 the solar projects. But, of course, the solar projects
6 recover that again over a number of years.

7 Q Okay. And this may be ground we've covered, but
8 what is the amount of advanced funding that FPL will
9 provide to SWA for the capacity of the electrical
10 component?

11 A At the present time it's \$56.6 million.

12 Q Does the cost of the electrical component vary
13 depending on the committed capacity?

14 A No, it does not. Well, let me, let me rephrase
15 that.

16 It may not. The advanced capacity payment is
17 the lower of the cost of the power block or the net
18 present value of the value of deferral. At the numbers
19 we're talking about now, the power block is the lower of
20 the two costs. If they came back with a committed
21 capacity of, say, 45 megawatts, then the net present value
22 of the value of deferral of the capacity payments would be
23 lower than 56.6, and that would set the advanced capacity
24 payment.

25 Q But at the current minimum 70-megawatt level,

1 this is --

2 A At an estimated 70 megawatts it would be
3 56.6 million.

4 Q Okay. And the amount of committed capacity
5 could be higher than 70?

6 A Yes, it could be.

7 Q What happens to any additional net capacity
8 generated by the expanded facility over the committed
9 capacity amount?

10 A Well, first of all, FPL is entitled to, under
11 the contract, all the committed capacity and energy from
12 the unit.

13 But just step back a second and let us suggest
14 that they commit to us 70 megawatts and they're able to
15 produce 80. Okay? Under those circumstances, they would
16 be producing at 80 because they have to destroy the MSW,
17 they have to burn the fuel. Our customers would get the
18 energy from it, and the energy is lower than our cost of
19 generation, so customer savings would go up.

20 Q Thank you. Over the life of the contract will
21 FPL's return on equity as a result of the 56.6 million
22 advanced capacity payment be approximately 27,943,000?

23 A Approximately.

24 Q Have there been any updates to this number or is
25 that constant?

1 A That's the latest number I have.

2 Q And after the contract is complete with FPL, can
3 SWA enter into another contract with FPL or another
4 utility?

5 A Yes, they can.

6 Q Might such a contract include capacity and
7 energy payments?

8 A Yes, it may.

9 Q Will FPL's ratepayers ultimately pay for the
10 entire cost of the electrical component plus a return on
11 equity to FPL?

12 A FPL's ratepayers aren't paying for any of the
13 electrical power of the unit. We're asking FPL's
14 customers to pay an advanced capacity payment and it means
15 exactly that. We're taking a capacity value that's normal
16 for any renewable contract or most renewable contracts and
17 we're discounting it back to today and they're getting it
18 paid in one lump sum. That isn't the same as paying for
19 the power block. We're not purchasing the power block.
20 We're just buying the capacity payment and we're making an
21 advanced payment for it. 377.709 just puts a limit on how
22 much that payment is to be and it's tied to the cost of
23 the power block, but that's not what our customers are
24 purchasing.

25 Q I don't think I've ever understood this concept.

1 Can you take another run at it? It, it appears that they
2 are paying the amount of the power block, and the question
3 becomes have they paid it -- if I could sort of get a
4 little background. It appears that if you pay it in 17
5 years and then someone enters another contract and they
6 pay for the capacity again, that they may be paying twice.
7 If you can turn that into a question and answer it, I
8 would be thrilled.

9 (Laughter.)

10 A Let me, let me -- I need to go a little bit into
11 the background of a few things, and maybe I can lay out
12 the logic at least from my perspective as to what's going
13 on.

14 First of all, understand that the way under the
15 Commission rules we calculate capacity price, capacity
16 costs for a contract is a value of deferral method. It's
17 not the cost of the capacity. It is the cost of moving
18 that need for capacity out one year. So you're not
19 renting the capacity, you're not buying the capacity,
20 you're compensating the renewable or the PPA holder for
21 just pushing off the need for one year. So whenever we
22 talk about a 17-year contract, we're not buying 17 years
23 of capacity. What we are doing is we're paying the SWA in
24 this case for moving our need off so we don't need, you
25 know, whatever megawatts of capacity, and we move it off

1 year by year by year. Okay? That's the way the value of
2 the capacity is calculated. It's not purchasing the
3 capacity. It's moving off by one year our customers' need
4 to buy it.

5 So then I'm sitting there and saying, okay, now
6 we've moved that off and what are we paying SWA for?
7 Well, SWA is getting paid for moving that off for 17
8 years.

9 If you take a look at many PPAs, okay, in this
10 case we have an advanced capacity payment, but put the
11 advanced capacity payment to one side. Under a normal
12 standard offer contract or many of the power purchase
13 agreements approved by the Commission there is a capacity
14 payment and you have a 20-year contract, and you
15 fundamentally paid for that power plant at the end of that
16 period of time.

17 I used to work on the other side of the fence
18 developing and selling power to the utilities, and the
19 capacity payment paid off my bank loans. It basically
20 paid for the power plant. But at the end of the contract
21 the utility didn't have rights to the power plant, the
22 customers didn't have an entitlement to it, and no one has
23 suggested that on any other PPA I've heard of before this
24 Commission.

25 The only difference between this and anything

1 else is they're getting an advanced payment. Basically
2 instead of leasing the car for the next five years with
3 monthly lease payments, we're saying, okay, one up-front
4 payment, you've got the use of the car for five years.
5 There's no difference between this and any other contract.
6 The exception being that 377.709 puts a cap on it, but
7 we're still buying the same product and we're still buying
8 it the same way.

9 Q Just to go further into what I don't very much
10 know about, do you -- how does the concept of getting a
11 return on the advanced capacity affect what you've just
12 said? Does that change the analysis at all?

13 A It really doesn't. Okay. It doesn't for two
14 reasons. Number one, whenever we hear this net present
15 value of the discounted capacity payments, we have to
16 discount those future payments back. Okay? The rate we
17 discount those future payments back is 7.293 percent,
18 which is the same rate that we look at for our cost of
19 capital on a go-forward basis for the amortization. So
20 we're discounting back at the same rate as our cost of
21 capital and, you know, they more or less cancel out.

22 The other thing is there are many things that
23 the utility purchases in advance for our customers, some
24 of which is recovered through FEECA clauses. So, for
25 example, we will go ahead and purchase and install

1 emissions control equipment on a plant. That can be
2 recovered through the clause having to do with, what is
3 it, not the energy conservation clause, the -- not energy
4 efficiency. All right. It goes through the clause having
5 to do with environmental, environmental cost recovery
6 clause. And so we've put in place emissions control
7 stuff. Our shareholders pay for it, it comes out of our
8 balance sheet, and we recover it at this same sort of rate
9 through the clause. And it's cleaning up the environment
10 and it's saving that for the customers.

11 Similarly, we'll go ahead and, you know, we'll
12 build a plant. Okay? The customers get the benefit of
13 it. We're doing the same thing. It's just like
14 prefunding and construction work in progress. Okay? The
15 company earns a return on that. We're shelling out the
16 money for a plant and it's getting financed until such
17 time as it goes into service and we start charging it to
18 the customers. It's not an unusual concept.

19 Q Just thinking about the pollution control item,
20 once your ratepayers have paid for it and it's got a
21 useful life of 30 years, what happens to it after 17
22 years?

23 A Well, first of all, putting aside the pollution
24 control, your issue is, okay, if we put in pollution
25 control equipment, at the end of the amortization period

1 it still has a value and our customers could potentially
2 get it.

3 Q That's what I was inartfully trying to ask.

4 A Well, keep in mind that using the same analysis,
5 remember, we're only paying year by year for the value of
6 deferral under the capacity the way we calculate it.
7 We're not paying them for 30 years of deferral, we're
8 paying them for 17. So effectively the useful life of
9 this advanced capacity payment is 17 years. And at the
10 end of that 17 years, the customers will have received the
11 full value of what they've paid for and there is no useful
12 economic life left in it.

13 Q Notwithstanding that we believe that it might
14 have -- there's evidence here that it may last 30 years,
15 it's just fully depreciated, it's used up?

16 A And but, you know, what, what the value is to
17 SWA is different than what the value is to our customers.
18 Our customers are paying for 17 years. And, remember,
19 they're not paying -- you know, it's unfortunate that the
20 way the rule is written, it ties it to the power block.
21 It's just kind of an artifice to put a cap on it.

22 If instead of looking at this as 90 megawatts,
23 if we were looking at this as 45 megawatts and the cost of
24 SWA was still 56.6 million for that power block, then the
25 payment would be tied to the discounted present value of

1 just the value of deferral and it would have nothing to do
2 with the power block. We wouldn't be paying for it.

3 Would there still be an issue of, well, you're
4 getting 17 years' worth of value out of it but the power
5 block still exists at the end of that period of time, and
6 why don't the customers continue to have the benefit of
7 the \$45 million they've put into it? The fact that this
8 is capped doesn't mean that we've entitled our customers
9 or our customers have paid for the power block. What it
10 means is the customers have, you know, approximately
11 \$80 million worth of value of deferral that they are
12 getting for \$56 million.

13 Q Thank you. Did FPL provide a summary of system
14 cost sensitivities illustrating the unit operating at
15 various capacity factors for 2016, '18 and '25 avoided
16 units?

17 A Yes.

18 Q And under all of these runs does FPL still plan
19 to build a combined cycle plant in 2016 with or without
20 the SWA expanded facility?

21 A Yes, we do.

22 Q Looking at the evaluation that you did that we
23 discussed, I believe it's number 86, your response, did
24 you reach any conclusions based on this evaluation?

25 A The conclusions we reached based on what is

1 shown in 86 and summarized in 86H is under every scenario
2 that we are aware of the unit and the contract is
3 cost-effective for our customers and saves them money.

4 Q And having now 70 megawatts as a minimum
5 committed capacity amount, how does that affect the ranges
6 in, in this response?

7 A 70 megawatts is between 45 and 90. It's still
8 going to be cost-effective for our customers.

9 Q Is it more favorable at 70 than it is at 45?

10 A It is more favorable at 70 than it is at 45.

11 Q Are the savings to FPL from the SWA agreement
12 largely the result of fuel and environmental or emissions
13 savings?

14 A Yes, they are.

15 Q Do the majority of the environmental savings
16 come from CO2 emissions?

17 A On a net present value, yes, they do.

18 Q And these CO2 savings are based on projections?

19 A They're based on an ICF study and projection,
20 yes.

21 Q And are CO2 emissions currently regulated?

22 A No, they are not.

23 Q Would the updated minimum capacity amount of
24 70 megawatts have an affect on the projected avoided
25 emissions?

1 A Yes, they would.

2 Q Could you explain that?

3 A Assuming 70 megawatts, we're going to wind up
4 with a little bit less fuel displacement from the unit, so
5 fewer megawatt hours. And, therefore, I would expect that
6 the environmental cost or environmental savings associated
7 with the contract would go down proportionately.

8 Q Have you had a chance to quantify the avoided
9 emissions based on the new minimum?

10 A I haven't had a chance -- I have had a chance as
11 part of looking overall at 70 megawatts to estimate the
12 value of the emissions, but not in terms of the emissions
13 composition.

14 Q And are the emissions savings estimates provided
15 by FPL in response to interrogatory number 93 only for the
16 FPL electric system?

17 A Yes, they are.

18 Q So you did not model or estimate the cost of
19 emissions from the SWA expanded facility?

20 A FPL's customers bear no costs for any emissions
21 from the SWA facility.

22 Q Thank you. What affect would the updated
23 minimum capacity, committed capacity have on the
24 comparison of the contract cost to FPL's avoided unit
25 cost?

1 A It would still be cost-effective. Again, if you
2 take a look at the 2016 avoided unit, 90 megawatts, it's
3 \$67 million to the good. So it would be proportional
4 again to the 40 megawatts.

5 Q Contrasted to the 45 megawatts, how would it
6 affect it?

7 A It would be higher savings than the
8 45 megawatts.

9 Q Thank you. I'd like to ask you a few questions
10 about the fuel forecast. This will be in the context of
11 your deposition at page 38 to 42. It's not my intent to
12 discuss any confidential information.

13 A Which pages of the deposition?

14 Q 38 to 42. You may not need it. I'm not sure.

15 A Okay. I'm there.

16 Q What time period is addressed in FPL's fuel
17 forecast?

18 A For the purposes of this analysis?

19 Q Yes, sir.

20 A From 2011 through 2034.

21 Q Okay. For FPL's fuel forecast is there a
22 difference between near-term and longer term forecasts?

23 A Yes, there is.

24 Q And the near-term represents a couple of years?

25 A Near-term represents a couple of years and is

1 derived from actual forward curves, market transactions.

2 Q Is near, is near-term -- it's a commodity
3 forecast?

4 A Fundamentally, yes.

5 Q What is a fundamental forecast?

6 A A fundamental forecast is based on economic
7 analysis of what are the driving issues, what's the cost
8 of, of drilling for gas, what's the available resources,
9 et cetera? Putting together a model of basically the
10 whole world's economy saying here's where we think gas
11 will be or coal or oil, as opposed to the commodity
12 forecast which is based on actual transactions that you
13 can see in the market.

14 Q Okay. Does the fundamental forecast include the
15 near-term?

16 A There are fundamental forecasts that include the
17 near-term, but you can't transact on them. We can't go
18 out and buy oil for delivery next year or natural gas for
19 delivery next year based on a fundamental forecast. We
20 can certainly do it based on the forward curve.

21 Q In your deposition you discuss a gap between the
22 short-term, the forward curve and the fundamental
23 forecast; is that correct?

24 A That's correct.

25 Q Did you also discuss a blending of the two

1 curves to smooth it out?

2 A That's exactly what we did.

3 Q Would you clarify what this means and what the
4 variables are?

5 A Well, each one of the, each one of the fuels has
6 its own characteristics and you have a forward curve in
7 terms of the commodity market. You can go out,
8 theoretically you can go out ten years, but there's very
9 few transactions. But you can certainly go out three,
10 four, five years.

11 And you also have fundamental forecasts, as we
12 discussed, that starts, you know, three, four, five years
13 out and then goes out 30 or 40 or 50 years or more. So
14 you have two intersecting curves that don't match up in
15 any of the years that they overlap. So we go out two to
16 two and a half years on the forward curve, take a point
17 about five years out on the fundamental curve, and then
18 just gradually try to blend the two curves.

19 Q Is this an averaging?

20 A It's not quite an averaging but it's close.

21 Q Okay. And that's what smoothing out is?

22 A That's what smoothing out is. We're taking two
23 curves and just trying to match them.

24 Q Is this a new approach to FPL fuel forecasting?

25 A No, it's not. We've been using it for years.

1 Q Is it reasonable for the Commission to rely on
2 this type of forecasting?

3 A Yes, it is.

4 Q Could you tell us why?

5 A Well, the short-term forecast is based on
6 transactions that are out there in the market. That is
7 the price today that I can buy gas or oil.

8 The fundamental forecast is put out by an
9 organization called PIRA, and PIRA does this for a lot of
10 entities on the fundamental side, including 20 of the 25
11 largest utilities in the country, 15 -- ten of the 15
12 largest banks. So it's relied upon industry widely as
13 being a forecast of energy prices that is valid.

14 Q And shifting gears a little bit, what type of
15 fuel is used for the avoided unit?

16 A The avoided unit predominantly uses natural gas.

17 **MR. MURPHY:** Okay. That's all I have. Thank
18 you.

19 Mr. Chairman. I ask that hearing Exhibits 5,
20 10, 11, 6, and 7 be included in the record.

21 **MR. COX:** Chairman Graham, FPL would have some
22 redirect questions for the witness when the opportunity
23 presents.

24 **CHAIRMAN GRAHAM:** Okay. Give me just a second.

25 **MS. LARSON:** Mr. Chairman.

1 **CHAIRMAN GRAHAM:** 5, 6, 7, 10 and 11 you said?

2 **MR. MURPHY:** Yes. And I believe, according to
3 Ms. Helton's direction, I'm out of order and we should
4 hear from the redirect first. And then I believe
5 Ms. Larson has some objections to my exhibits.

6 **CHAIRMAN GRAHAM:** I just wanted to make sure I
7 had the ones that you called out. 5, 6, 7, 10 and 11.

8 **MR. MURPHY:** 5, 10, 11, 6 and 7. Yes, sir.

9 **CHAIRMAN GRAHAM:** Okay. Ms. Larson, you have
10 your objections on a couple of them. Let's let them
11 redirect and come back to you. Is that what you had your
12 hand up for?

13 **MS. LARSON:** (Inaudible. Not on microphone.)

14 **THE COURT REPORTER:** I can't hear you. I didn't
15 hear what she said.

16 **CHAIRMAN GRAHAM:** She, she said yes.

17 FP&L.

18 **MR. COX:** Thank you, Chairman Graham.

19 **REDIRECT EXAMINATION**

20 **BY MR. COX:**

21 Q Mr. Hartman, in the questioning earlier today
22 from Ms. Larson, do you recall her making a statement that
23 FPL is, quote, charging its customers to save its
24 customers money?

25 A Yes, I do.

1 Q Or something to that effect. Do you agree with
2 that statement?

3 A I think it's a bit of a misrepresentation. We,
4 we charge our customers money and save them money in many
5 areas. We build a new, more efficient power plant that
6 reduces fuel costs. As we -- as I earlier discussed,
7 we'll put in environmental upgrades to reduce emissions
8 from the plants. So, you know, is it pejorative?
9 Perhaps. But the issue is that, yes, we invest money for
10 our customers and it saves them money.

11 Q Could you explain just briefly at a high level
12 the overall basis for the cost savings to FPL's customers
13 under the proposed contract?

14 A Well, we've spent a fair bit of time with
15 several of the witnesses talking about the cost, which is
16 the advanced capacity. But this unit displaces a given
17 number of megawatts from our system. The energy pricing
18 on the contract is tied to a new unit which will be the
19 most efficient unit on the system, so it's the lowest
20 energy cost, and it will, therefore, displace higher cost
21 units whenever it's running. So we'll see fuel savings,
22 we will see variable O&M savings, and we will see
23 environmental savings, all of which more than outweigh the
24 costs.

25 Q When you say outweigh the costs, you mean

1 outweigh the costs that FPL will recover from its
2 customers?

3 A Yes. That's correct.

4 Q Do you recall some questions posed earlier today
5 by Ms. Larson regarding SWA interrogatory response 25F
6 which focused on the question, "Please provide the amount
7 of the cost of design of the electrical component of the
8 expanded facility"?

9 A Yes, I do.

10 Q And was it your testimony in this case that the
11 design cost of the electrical component as it's used in
12 Section 377.709 is equivalent to the budgeted cost of the
13 power block?

14 A Yes, it is.

15 Q And that amount forms the basis for the advanced
16 capacity payment under the proposed contract; is that
17 correct?

18 A It forms the cap for the advanced capacity
19 payment. Yes.

20 Q Could you, could you explain the basis for your
21 conclusion that the design cost of the electrical
22 component is equivalent to the budgeted cost of the power
23 block?

24 A Certainly. If you take a look at the, at the
25 beginning of 377.709, the legislative intent, they talk

1 about the fact that this is to encourage the development
2 of these types of units. Clearly it makes sense to
3 encourage them to help support the, the funding and
4 development and construction of the electrical portion.

5 If the intent was to only fund just the design
6 services, comparing it with the value of the capacity
7 earned by our customers would be just blown out of the
8 water almost always. We're looking at -- at 90 megawatts
9 it's worth approximately \$80 million in deferred capacity
10 value.

11 Then the other thing is just, you know, the
12 phrase "design cost" is not clearly defined or not defined
13 at all in the statute. So you have to take a look and
14 say, okay, what does it mean? It's common to refer to the
15 design cost of a building. That isn't the cost of the
16 architecture's (phonetic) fee, it's the anticipated cost
17 of building the building. And the use like that has been
18 used by this Commission in a number of dockets, at least
19 one with public works, waterworks that I've looked at
20 where they were looking at the return and the cost and
21 they referred to the design cost as the budgeted cost of
22 upgrading the facility. So it's a common usage of it.

23 **MS. LARSON:** Mr. Chair, I object. He's bringing
24 in a water case that, one, I have no reference for, and he
25 pulled \$80 million from somewhere. I'm just trying to

1 follow, I truly am trying to follow what he's saying, but
2 it's pulling numbers that were not testified to earlier
3 today. So I -- if you're going to -- at least if you're
4 going to, you know, cite a case, then at least put it in
5 front of me so I have some frame of reference.

6 **CHAIRMAN GRAHAM:** The \$80 million was spoke of
7 earlier. He was saying the value of the, the
8 90-kilowatt plant -- 90-megawatt plant. Now the water
9 case that you're speaking of, which just I think he was
10 pointing to an example, but let's just stick to the facts
11 that we have in front of us.

12 **THE WITNESS:** That would be fine.

13 **MR. COX:** Chairman Graham, if I might clarify on
14 that with the water case. We did provide that in an
15 interrogatory response with a docket number which was
16 provided to Ms. Larson.

17 **CHAIRMAN GRAHAM:** Which is which interrogatory,
18 do you know?

19 **MR. COX:** I will have to pull that for you. But
20 we do have that as part of the record.

21 **CHAIRMAN GRAHAM:** Let's pull that out so we have
22 that in front of us.

23 **MS. LARSON:** May I ask a question?

24 **CHAIRMAN GRAHAM:** We need to let him finish with
25 his rebuttal.

1 (Pause.)

2 MR. COX: I'll restate that. I'm sorry.

3 Chairman Graham, we've located the response. It
4 was an FPL response to Staff interrogatory request number
5 45. It's stated clearly at the end of that response in
6 part B.

7 It states, "In addition, the Commission has
8 itself used the phrase 'design cost' in the same manner;
9 i.e., the design costs are equivalent to the total cost of
10 the construction project, CEG PSC-08-0228-PAA-WS, In Re:
11 Town and Country Utilities Company, Docket Number
12 060602-WS." And that's our complete response on that
13 issue.

14 CHAIRMAN GRAHAM: Okay. I got it.

15 Ms. Larson, your objection, I guess, is
16 overruled. You can continue.

17 MR. COX: Thank you, Chairman Graham.

18 BY MR. COX:

19 Q Mr. Hartman, do you recall in your discussions
20 earlier today questions from Ms. Larson about the issue of
21 the basis of this contract, whether it was based on an
22 avoided unit from the 2010 Ten-Year Site Plan versus the
23 2011 Ten-Year Site Plan?

24 A Yes, I do.

25 Q What was the basis for the proposed contract?

1 Was it the 2010 Ten-Year Site Plan or the 2011 Ten-Year
2 Site Plan?

3 A The basis of the contract was the desire by FPL
4 and the agreement with SWA to use the most recent
5 information available at the time we did the filing with
6 the Commission, which means it was going to be the 2011
7 Ten-Year Site Plan.

8 Q Mr. Hartman, do you recall in response to a
9 question, I believe it was from Commissioner Edgar today,
10 that you discussed interrogatory number 54, which is a
11 table describing the bill impact of the SWA facility?

12 A Yes.

13 Q What are the conclusions that you draw from
14 looking at this table and the results of this table with
15 regard to impact on FPL's customers' bills from the SWA
16 facility?

17 A The overall impact of the SWA contract on our
18 customers is their electrical bills are going down as a
19 result.

20 Q And would that be based on the numbers in the
21 column to the far right-hand side?

22 A That's correct. It's also based on 86H which we
23 looked at earlier, which looked at the net present value.
24 And in both cases, you know, the impact of the contract is
25 the savings for our customers.

1 Q Mr. Hartman, do you recall some questions that
2 were directed to you earlier regarding, I think, I believe
3 from the Staff, regarding FPL's proposed cost, recovery of
4 costs under this contract?

5 A Yes.

6 Q Do you believe that Section 377.09 [sic]
7 supports the proposed cost recovery that FPL has proposed
8 for the costs associated with the contract proposed in
9 this docket?

10 A Yes, I do.

11 Q What's the basis for your opinion?

12 A I'm trying to look for exactly where the section
13 is in the statute. But fundamentally 377.709 specifically
14 refers to financing of the advanced capacity payment by
15 the utility, and financing to me means paying it out over
16 time.

17 Q When you say that the statute refers to
18 financing, would that be found in Section (3)(b)(4)?

19 A Yes. It says, "The amount of financing,
20 including all carrying costs plus reasonable and prudent
21 administration costs incurred by the electric utility must
22 be recovered from the ratepayers of the electric utility."

23 Q Is it your opinion, Mr. Hartman, that the
24 proposed cost recovery reflects recovery for benefits that
25 FPL's customers will receive under the proposed contract?

1 A Yes, it is.

2 Q Could you please explain why that's true?

3 A The -- well, a couple of reasons. Number one,
4 the advanced capacity payment secures capacity for our
5 customers, which is a value and is needed, as, as has been
6 discussed here earlier.

7 The other thing is that the advanced capacity
8 payment is tied to an in-service date of the 2016 unit and
9 also tied to a fuel cost and an energy cost associated
10 with that.

11 So the energy savings that you are seeing here
12 is tied to that advanced capacity payment. By financing
13 the advanced capacity payment, we are matching up the
14 customers' payments pretty closely for the ACP with the
15 benefits they're receiving through energy and fuel cost
16 savings.

17 Q Does the position that you just stated reflect
18 an opinion and understanding that FPL is not paying for
19 the electrical component itself in this case?

20 A That's clear. We're not paying for the
21 advance -- for the electrical component. We're paying for
22 capacity that our customers are receiving.

23 **MR. COX:** FPL has no further questions. Thank
24 you.

25 **CHAIRMAN GRAHAM:** Okay. I appreciate it.

1 Ms. Larson, you had an objection with, as marked
2 on this sheet, number 6 and number 10, I believe. That's
3 correct?

4 **MS. LARSON:** Yes.

5 **CHAIRMAN GRAHAM:** All right. Let's go ahead and
6 we're going to add 5, 7 and 11, those exhibits, and then
7 we'll come back and do 6 and 10. Does anybody have any
8 other questions or concerns about 5, 7 or 11? All right.
9 We will enter that into the record.

10 (Exhibits 5, 7 and 11 marked for identification
11 and admitted into evidence.)

12 Ms. Larson, let's hear 6.

13 **MS. LARSON:** Quite frankly, Mr. Chair and
14 Commission, the 2010 site plan was -- Ten-Year Site Plan,
15 2011 Ten-Year Site Plan was just presented to you on
16 April 1st. Truly, and I can only look at this from a
17 layperson's point of view, I have no other point of view,
18 no frame of reference for you, I promise. But to -- I
19 mean, the only thing I can call what he just spoke about,
20 I call it pretzel logic. You're spending my money to save
21 my money to put in a Ten-Year Site Plan that you have not
22 adopted? They said that they, some -- one of the guys,
23 I'm sorry, to my left I can't see, so -- I think I
24 explained that already -- but they said that they knew
25 about this plant since 2009. Certainly if it was in the

1 purview of FPL to even think about saving us money, saving
2 us time, saving us energy, whatever all that advanced
3 capacity speak is, it would have been in the 2010 Ten-Year
4 Site Plan.

5 **CHAIRMAN GRAHAM:** Well, I believe what he said
6 was they weren't going to consider it until they're down
7 the path into negotiations to this deal, if what I heard
8 correctly, that's the reason why it was part of the two
9 thousand -- that was the reason why it was part of the
10 2011 and not 2010 site plan.

11 **MS. LARSON:** With all due respect, Mr. Chair,
12 there is no other power company who could buy power from
13 the Solid Waste Authority expanded facility. FPL is a
14 monopoly in our area. There's -- you know, when they
15 talked about 2017 and the 17 years out and Charles brought
16 up the, you know, there's an extra 13 years there because
17 the power block could last 30 years, we're only buying 17
18 years. There is no other, you know, well, we have an
19 option of another power company coming in and buying the
20 capacity for those extra 13 years. I might be doing my
21 math, but I think 13 and 17 is 30 years. Here we are.
22 Where, who, what facility is going to come in and buy the
23 expanded facility capacity for the 13 years?

24 So it's just the site plan -- it seems like this
25 has been in the works for several months. Like I said,

1 I'm at the Solid Waste Authority also. I am a ratepayer
2 and a taxpayer. So I am -- I have -- it's hard for me to
3 separate the hats. And I said that this morning, that I
4 truly do try to separate my Commissioners. They're one
5 group and then they're another group. That's very
6 difficult. And I truly, I truly, as far as the 2011
7 Ten-Year Site Plan, I don't think that should be part of
8 the record. That's just me. Thank you.

9 CHAIRMAN GRAHAM: I'm sorry. One more time.
10 You said you do not think the 2010 --

11 MS. LARSON: '11, the 2011 --

12 CHAIRMAN GRAHAM: The 2011.

13 MS. LARSON: -- Ten-Year Site Plan should be
14 introduced here. I think we, we based this whole hearing
15 on the 2010 Ten-Year Site Plan.

16 CHAIRMAN GRAHAM: Ms. Helton.

17 MS. HELTON: Mr. Chairman, I think this is
18 another one of those instances where it would be helpful
19 to hear from the parties and what their thoughts are with
20 respect to entering one or two Ten-Year Site Plans into
21 the record.

22 CHAIRMAN GRAHAM: Yes, sir.

23 MR. COX: Chairman Graham, the 2010 Ten-Year
24 Site Plan and the 2011, which I guess is really the only
25 issue that Ms. Larson has raised, whether that should be

1 admitted into the record, is clearly relevant.
2 Mr. Hartman has testified that it forms a basis, the
3 avoided unit that he's used, that the parties have used
4 for the proposed contract. Ms. Larson may agree --
5 disagree with that as a matter of principle and she's
6 entitled to make those arguments, but it's certainly
7 relevant and I see no basis for striking its
8 admissibility.

9 Co-counsel makes another good point here, and
10 that is that in Mr. Hartman's testimony on page 11,
11 starting at line 12, he noted that FPL is currently
12 conducting its Ten-Year Site Plan analysis. And as part
13 of the analysis, FPL will determine early in 2011 when it
14 will need to build or procure additional generating
15 capacity to meet its expected system demand for energy and
16 capacity. So clearly it was contemplated that we were
17 doing this analysis; it would form a basis for what was
18 being proposed in this case. And, again, as Staff has
19 offered this as an exhibit, we think it is relevant and
20 certainly admissible. It is FPL's filing that was made on
21 April 1st of this year, and I see no, no, no reasonable
22 basis under law to, to not allow it to be admitted into
23 the record. Thank you.

24 **CHAIRMAN GRAHAM:** Yes, Ms. Larson.

25 **MS. LARSON:** The very -- with all due respect,

1 the very first time I saw the 2011 Ten-Year Site Plan was
2 last Monday. How could the Florida ratepayers, me,
3 anybody, make good judgment calls or even make any
4 judgment calls on how FPL is, you know, coming to their
5 conclusions if, you know, things aren't available a week
6 before we're going to go and try to make a decision on
7 this?

8 **MR. COX:** Chairman Graham, if I might respond.
9 The filing was made on April the 1st; it's been available
10 since. Ms. Larson asked us for a copy just this past
11 week. We provided a copy when asked. And that came
12 basically when Staff decided they had wanted to include it
13 as an exhibit. We provided it as soon as we could. But
14 it has been available as a matter of public record since
15 April the 1st. These issues also have been flushed out
16 prior to that through Staff discovery requests as well as
17 the depositions in this case, which are all part of the
18 record per the Staff exhibits.

19 **CHAIRMAN GRAHAM:** Yes, sir.

20 **MR. ZAMBO:** Commissioner Graham and
21 Commissioners, as the witnesses have testified to earlier,
22 when we began these negotiations with Florida Power &
23 Light, we were pursuing the Ten-Year Site Plan for 2010.
24 We knew that they were revising their resource plan. As
25 it turns out, the resource plan did change to the 2016

1 unit, which we became aware of in February or March.

2 But I, I, I hesitate to do this, but I think
3 Mr. Hartman's exhibit to his response to interrogatory
4 number 86H shows that regardless of which Ten-Year Site
5 Plan we use, the contract would be cost-effective with the
6 2016 avoided unit, which is in the current Ten-Year Site
7 Plan, or the 2025 avoided unit, which was in the
8 2010 Ten-Year Site Plan. I'm not suggesting that we
9 should use the 20, the 2010 Ten-Year Site Plan, but I
10 think it's a moot point because the cost-effectiveness is
11 there in any event. In fact, it seems to be higher in
12 some, in some scenarios.

13 **CHAIRMAN GRAHAM:** Ms. Larson, I'm going to allow
14 the 2011 site plan in. As I said earlier, I think the
15 most current data we can have is probably the best data.

16 **MS. LARSON:** May I?

17 **CHAIRMAN GRAHAM:** Yes, ma'am, please.

18 **MS. LARSON:** With all due respect, Chair,
19 Mr. Chairman -- I don't -- I'm sorry. I don't know how to
20 address you, Mr. Graham. How about Mr. Graham? Is that
21 fair?

22 **CHAIRMAN GRAHAM:** You haven't done anything
23 wrong so far.

24 **MS. LARSON:** With all due respect, when this was
25 presented where I live down in Palm Beach at the Solid

1 Waste Authority, the avoided unit was a coal unit way back
2 when. And now we got a new unit in the 2011 site plan,
3 and it's supposedly a gas-fired plant that wasn't going to
4 happen in 2016.

5 As far as a Florida ratepayer and as a taxpayer,
6 this is very confusing and it doesn't seem logical. It's
7 the, it's just -- you know, I mean, really what did we
8 avoid? And I guess I have to -- I just want that on the
9 record for you that you know that that question is out
10 there for, for me and the, you know, the people that are
11 cheering for me when I came up here. Thank God someone
12 came up and asked a question.

13 I'm just, you know, I'm truly -- you were not
14 privy to Solid Waste and I'm not asking you to be privy to
15 the meeting, but public, the public couldn't even get into
16 that particular meeting on April 13th. And this is --
17 these are the questions that we have. So the 2011 -- I'm
18 on the record, I totally object to the 2011 Ten-Year Site
19 Plan being involved in this.

20 **CHAIRMAN GRAHAM:** Ms. Larson, I do realize this
21 is a, a very dynamic situation where it seems that it's
22 almost like drinking water from a fire hydrant. It's just
23 going to keep coming at you. But the facts that are
24 presented before us today are the facts that we have to
25 deal with. And I think the most up-to-date facts we have

1 are the better, the better way to go because these, these
2 are the facts that are going to be based on the decision
3 that we have to make. And, you know, I'd much rather have
4 the site plan, this year's site plan rather than last
5 year's site plan when we're trying to make those facts.

6 Ms. Helton.

7 **MS. HELTON:** Mr. Chairman, if I could just put
8 something out there on the record just so that the record
9 is clear.

10 I've pulled up Section 186.801, which is the
11 section in the *Florida Statutes* that governs the Ten-Year
12 Site Plans. And I just want to make clear that when the
13 companies or electric utilities file their Ten-Year Site
14 Plans, the Legislature has said that they shall provide an
15 estimate of their power generating needs. And when the
16 Commission looks at those plans, you don't approve them,
17 you just deem them either suitable or unsuitable. And the
18 Legislature has recognized that this is tentative
19 information that the utilities have filed that is for
20 planning purposes only. And that is exactly what the
21 Ten-Year Site Plan document is, it's a planning document
22 that is constantly evolving.

23 **CHAIRMAN GRAHAM:** Okay. Ms. Hartman [sic], that
24 was number 6, which I'm overruling. And the other one was
25 number 10; is that correct?

1 (Pause.)

2 MS. LARSON: Sorry, Mr. Chair.

3 CHAIRMAN GRAHAM: No, you're fine.

4 MS. LARSON: I just wanted -- I'm objecting to
5 number 10.

6 CHAIRMAN GRAHAM: What was your objection to
7 number 10?

8 MS. LARSON: The staff interrogatories, number
9 10, number 10. That was some that I remember from this
10 morning. And I lost my notes somewhere, but that's okay.
11 But I --

12 CHAIRMAN GRAHAM: Let's see if we can't pull --

13 MS. LARSON: I just want the objection on the
14 record.

15 CHAIRMAN GRAHAM: I want to see if I can't pull
16 up number 10 and see what it is. Is that the proposed
17 capitalization table?

18 MS. LARSON: I think that's what it was. I had
19 all my paperwork in front of me this morning and I moved,
20 I moved it, Chair. So I apologize, but I have a little
21 side note on here.

22 CHAIRMAN GRAHAM: Well, no, that's fine.
23 Actually what we'll do is we'll take a five-minute recess
24 and I'll let you see if you can't find that sheet you're
25 looking for.

1 **MS. LARSON:** It's around here somewhere. Sorry.

2 **CHAIRMAN GRAHAM:** No. That's all right. If
3 five minutes will help you, we'll take the five-minute
4 recess and see if we can't find it.

5 **MS. LARSON:** (Inaudible. Not on microphone.)

6 **CHAIRMAN GRAHAM:** We'll take a five-minute
7 recess.

8 (Recess taken.)

9 All right. We are back. And we're dealing with
10 hearing ID number 10. Ms. Larson.

11 **MS. LARSON:** The confusion in the notes was I
12 made notes for my husband so he could follow along and my
13 notes got tossed and probably in the trash. No. But so I
14 apologize for that. I was -- I'm referring to my
15 husband's notes because I made a note for him, too.

16 Regarding number 10, I wanted to object to --
17 and, you know, you might overrule me, I understand that,
18 but it's number 10, number 15, number 44, number 60,
19 number 90F and number 101.

20 **CHAIRMAN GRAHAM:** You mean number 80F?

21 **MS. LARSON:** Yes. I apologize.

22 **CHAIRMAN GRAHAM:** That's all right.

23 **MS. LARSON:** I can't even see anymore, Chairman
24 Graham. We've been driving for days. So I apologize.
25 And I broke my glasses this morning, so.

1 **CHAIRMAN GRAHAM:** Now what I'm trying to get to
2 is -- I guess I need to get to the heart of the objection.
3 Do you know specifically like on number 10, are you just
4 objecting to the chart as a whole or are you objecting
5 to -- I guess I'm just trying to, I'm trying to get you to
6 --

7 **MS. LARSON:** I apologize. See, I was ready to
8 do my objections this morning. The way your, your, your
9 court -- I don't know what to call you -- your Commission
10 usually works, a lot of times you deal with this in the
11 beginning of the day. You changed your -- I did try to
12 understand how you, the Commission runs their hearings
13 because, as I said, I am not privy to being in a hearing
14 before. And the manner in which you dealt with it is, you
15 know, you dealt with it in witnesses instead of up-front,
16 so.

17 **CHAIRMAN GRAHAM:** Well, it's a little different
18 between doing the actual hearings and doing the agenda
19 meetings, agenda conference rather.

20 **MS. LARSON:** Exactly. Absolutely. And I
21 apologize for that. I mean, I had my druthers about me at
22 8:00, 9:00 this morning, but it's 3:00 and I'm -- I'll
23 just go on the record that I'm objecting to these specific
24 ones.

25 **CHAIRMAN GRAHAM:** Okay.

1 **MS. LARSON:** Because to pull out that -- I'm not
2 touching that mountain of paper. I, I'm afraid of it.

3 **CHAIRMAN GRAHAM:** All right. Let the record
4 show that Ms. Larson is objecting to hearing ID number 10,
5 specifically interrogatories 10, 15, 44, 60, 80F and 101.

6 Ms. Larson, I'm going to have to tell you,
7 because I don't know specifically what the objection is,
8 I'm going to have to overrule those objections. But we do
9 have your objection on the record.

10 **MS. LARSON:** That's all I was asking.

11 **CHAIRMAN GRAHAM:** Okay.

12 **MS. LARSON:** Because at this point in the -- I
13 truly, I should have them right in front of me and pull
14 them out and yell and make a lot of noise.

15 **CHAIRMAN GRAHAM:** That's, that's quite all
16 right. I think for a layman you've done a fantastic job,
17 I really do. All right.

18 **MS. LARSON:** Thank you. I, as I said, I
19 apologize. I have not ever done a hearing part. I think
20 Ms. Edgar is the only one who would really truly realize
21 when I come before the Commission it's as a member of the
22 public, not as an Intervenor. The first time I ever did
23 it, so it's a learning experience. Thank you very much.

24 **CHAIRMAN GRAHAM:** All right. So we will enter
25 hearing, hearing ID number 6 and number 10 into the

1 record.

2 (Exhibits 6 and 10 marked for identification and
3 admitted into evidence.)

4 Let me figure out where we are. All right.
5 We've done all the witnesses. The witness is excused.

6 COMMISSIONER BALBIS: Mr. Chairman.

7 CHAIRMAN GRAHAM: Hold on a second. Hold on.
8 Commissioner Balbis.

9 COMMISSIONER BALBIS: Thank you, Mr. Chair.

10 CHAIRMAN GRAHAM: You're not excused yet.

11 COMMISSIONER BALBIS: I have a couple of
12 questions for this witness. I think they've, they've
13 already, most of them have been answered, but I'd just
14 like for you to clarify a couple of things.

15 You know, obviously the crux of the, this
16 statute is the comparison of the two costs, whether it's
17 the net present value of the avoided unit over the term of
18 the agreement or the cost of the, the generating
19 component. And there's been -- you've mentioned several
20 times 56.6 million for the generating component, and then
21 you've recently mentioned as far as the net present value
22 of being around 80 million.

23 But I also remember reading in some of the
24 documentation the number of 98.8 million or somewhere
25 around that. What, what is that other number? Because

1 that's really I think at the heart of the matter on
2 comparing whether or not it's in the best interest of the
3 ratepayers to go forward with this agreement rather than a
4 traditional.

5 **THE WITNESS:** Part of the trouble with trying to
6 compare numbers is on the discounted present value of the
7 value of deferral it depends back to what point do you
8 discount it? Okay. So if you're discounting it back to
9 2011, you wind up with a different number. If you
10 discount it to 2013 or 2014, you wind up with different
11 numbers just due to the way the discount, discounting
12 works.

13 So various people -- I think SWA has done some
14 and we've done some -- sometimes we're discounting it back
15 to a different period. And with numbers in the millions
16 of dollars, discounting by a couple of months could make a
17 substantial difference. Whenever I use a number of, say,
18 \$80 million, that's discounted back to 2013. At the
19 present time we expect that you're going to see a payment
20 to SWA of \$56.6 million at the end of 2013.

21 There's also, in another one of our
22 interrogatories, a figure of the net present value of the
23 discounted capacity based on 90 megawatts of \$106 million,
24 and that's a value in 2016 whenever the avoided unit comes
25 in place. So numbers can play just depending on -- unless

1 you say, okay, we're going to pay exactly this month, et
2 cetera, it can compare.

3 But fundamentally all of the numbers are
4 indicating that there's, we're paying \$25 million or so
5 less than it's worth at 90 megawatts. If it's
6 60 megawatts, customers are getting basically what it's
7 worth, but they're still getting the fuel cost savings.

8 **COMMISSIONER BALBIS:** So, again, and, Mr. Chair,
9 a little liberty here. Then just to clarify then, a
10 traditional standard offer contract, it would be that
11 higher number.

12 **THE WITNESS:** That's correct.

13 **COMMISSIONER BALBIS:** Okay. And I think that's,
14 that's important to point out.

15 The other clarification I need, you had
16 mentioned that entering into this agreement will not defer
17 the 2016 unit; correct?

18 **THE WITNESS:** Entering into this agreement will
19 defer 90 megawatts of the expected 2016 load. But we
20 still have additional shortage on our 20 percent capacity
21 margin, so we will still have to build that unit to meet
22 the rest of our load needs.

23 **COMMISSIONER BALBIS:** So when that unit becomes
24 in operation though, you would not have to run it as high
25 of a capacity than without this, so you would offset this

1 90 megawatts. So I guess the -- if you could answer,
2 would it be, even though the unit comes into operation
3 regardless of entering into this contract, customers will
4 still see a savings, although the unit isn't deferred,
5 because it will have to operate less or use lower --

6 **THE WITNESS:** Well, actually that, that unit
7 will still run a lot, okay, because it's a very efficient
8 unit. But the economic analysis we use, we run a system
9 model with and without this contract. Okay? So it
10 includes that 2016 unit in there, and all of our savings
11 that we've projected are based on that 2016 unit being in
12 there. What the 90 megawatts really does is, yes, we need
13 45 megawatts or 70 megawatts or whatever winds up with
14 this contract to defer capacity. But the energy savings
15 is because this unit is priced as, as our most efficient
16 unit in terms of its energy payment. But the unit that
17 doesn't run isn't our most efficient unit, it will be our
18 least efficient unit. So instead of having -- you know,
19 this unit is basically about a 6,500 heat rate, which is a
20 very efficient power plant, so instead of -- you know,
21 that will be the basis of their payment. But the unit
22 that won't run will be a 10,000 heat rate unit, a unit
23 that's much less cost-effective for our customers to
24 operate, and that's what results in the fuel savings.

25 **COMMISSIONER BALBIS:** So, again, just to

1 summarize that, although it does not defer the
2 construction of any generating facility, it will still
3 result in savings to the ratepayers.

4 **THE WITNESS:** It still results in savings for
5 the ratepayers.

6 **COMMISSIONER BALBIS:** Okay. And then kind of
7 shift gears a little bit. There's been a lot of
8 discussion at least in the documentation in the docket as
9 far as protections for cost overruns. And according to
10 this agreement, the budgeted amount is established. If
11 it's not now, then it's November 1st or whenever the full
12 contract is executed with the design builder/operator. So
13 I guess what protections are in place for the ratepayers
14 on any potential cost overruns?

15 **THE WITNESS:** Once the cost is established, and
16 it has to be less than the net present value, there's no
17 commitment for us to pay another dime. I mean, if it
18 costs them three times that to build it, it's what the
19 advanced capacity payment is under the terms of the
20 agreement.

21 **COMMISSIONER BALBIS:** And if there are any
22 delays in construction or completion of that, what
23 protections are in place?

24 **THE WITNESS:** There is a protection in the sense
25 that potentially if they don't come online by June 1st,

1 2016, they could be in default under the contract, in
2 which case they would have to pay us back the advanced
3 capacity payment plus accumulated interest.

4 **COMMISSIONER BALBIS:** Okay. I have no further
5 questions.

6 **CHAIRMAN GRAHAM:** Okay. Ms., Commissioner
7 Brown.

8 **COMMISSIONER BROWN:** Thank you.

9 Mr. Hartman, just one last question I guess as a
10 follow-up to the purchased power agreement. I know that
11 you stated earlier that -- I don't know if it was you
12 actually or if it was another witness -- but with regard
13 to outstanding variables that are not necessarily concrete
14 or are unknown, at this point in the negotiations has the
15 contract been finalized between the parties and are there
16 any unknown variables or terms in the agreement that are
17 still in negotiation?

18 **THE WITNESS:** First of all, the 377.709, we have
19 to file an unexecuted contract with you. You approve it
20 and we then sign it. There's nothing left to be
21 negotiated in it to the best of my knowledge. It is open
22 for you, however, to make up your minds as to whether you
23 wanted to change things in it. But we think the contract
24 is fine. It would be ready for us to take to their board
25 to execute and our board to execute.

1 **COMMISSIONER BROWN:** But between -- my question
2 really was between the parties there are no unknown terms
3 left to be negotiated between --

4 **THE WITNESS:** There are no terms to be
5 negotiated.

6 **COMMISSIONER BROWN:** Thank you.

7 **CHAIRMAN GRAHAM:** Okay. My light board is out.
8 Solid Waste, do you guys have anything final to add or
9 say?

10 **MR. ZAMBO:** Nothing I can think of,
11 Mr. Chairman.

12 **CHAIRMAN GRAHAM:** Florida Power & Light?

13 **MR. COX:** Chairman Graham, I just have one minor
14 thing. And it's -- earlier there was a discussion about
15 the panel depositions.

16 **CHAIRMAN GRAHAM:** Uh-huh.

17 **MR. COX:** In the meanwhile we have located
18 copies of two, examples of two notices of panel
19 depositions for different dockets here at the Commission,
20 and I'd like to offer those into evidence, if I might.

21 **CHAIRMAN GRAHAM:** Please. Where are they?

22 **MR. COX:** Excuse me?

23 **CHAIRMAN GRAHAM:** I was just wondering what, if
24 you can tell me what the --

25 **MR. COX:** Oh, I can tell you specifically what

1 they are. Sure. The first is in the, FPL's fuel and
2 purchased power cost recovery clause docket, Docket
3 090001-EI. It was a notice dated October 2nd, 2009, and
4 that was a deposition of two panels, two panelists.

5 **CHAIRMAN GRAHAM:** Okay.

6 **MR. COX:** The other is a deposition of four
7 panelists, and that was a deposition noticed -- let me see
8 here. The date is September 2nd, 2001, I believe, on the
9 Docket 000824, 001148 and 010577.

10 **MS. LARSON:** Reread that.

11 **MR. COX:** I have copies that I can pass out.

12 **CHAIRMAN GRAHAM:** Okay. No. Please, you can go
13 ahead and pass them out. I just wanted to make sure that
14 it was before my time so I couldn't feel guilty for not
15 recalling.

16 **MR. MURPHY:** To follow up, Staff was able to
17 find 15 to 20 examples in Case Management where there were
18 panel depositions.

19 **CHAIRMAN GRAHAM:** That was all before my time
20 too; right?

21 **MR. MURPHY:** I don't think you were born yet.

22 (Laughter.)

23 **CHAIRMAN GRAHAM:** Now, Mary Anne, to add these
24 two to the record, we come up with two more?

25 **MS. HELTON:** You would tack on a number at the

1 end. So those would be, you can either do a combination
2 exhibit or you can mark them separately.

3 **CHAIRMAN GRAHAM:** We'll mark them 15 -- we'll
4 mark them 14 and 15.

5 (Exhibits 14 and 15 marked for identification.)

6 This first one, I go --

7 **MS. HELTON:** You could just say Fuel Clause
8 Deposition Notice for the one, the 090001.

9 **CHAIRMAN GRAHAM:** I don't have that one in front
10 of me yet.

11 **MS. HELTON:** Okay. And the other one, I think,
12 was from the Progress rate case dockets. So you could say
13 Progress Deposition Notices would be great short titles.

14 **CHAIRMAN GRAHAM:** All right. Number 14 is going
15 to be Docket Number --

16 **MS. LARSON:** Which one -- pardon me, Chair.
17 Which one are you identifying here?

18 **CHAIRMAN GRAHAM:** This is the one that at the
19 top -- well, a little bit down from the page it says:
20 "Notice of Telephonic Depositions," which is Docket Number
21 090001. At the bottom right-hand corner it says, "Docket
22 Number date 10-2-09," October 2, '09.

23 **MS. LARSON:** Okay. Are those two employees of
24 FPL being deposed at the same time?

25 **CHAIRMAN GRAHAM:** That is what I understood

1 from --

2 MS. LARSON: Okay.

3 CHAIRMAN GRAHAM: Yes. Okay. Docket Number
4 090001. And then the other one, which will be number 15,
5 we will call that, let's just go with the docket number at
6 the top, which would be Docket Number 000824.

7 MS. LARSON: Pardon me, Chair.

8 CHAIRMAN GRAHAM: Yes.

9 MS. LARSON: This looks like it's, you know,
10 three different power companies testifying. Is that
11 correct? It doesn't look like it's FPL being deposed and
12 there's a main witness and five other witnesses. That was
13 my concern with this particular deposition.

14 MS. HELTON: I don't have the notice in front of
15 me, Mr. Chairman, but my recollection from that Docket
16 Number 000824, that was a Progress rate case docket; is
17 that correct? And there would have been multiple
18 witnesses that testified in that case and there
19 probably -- so it was, it dealt with Progress, not Florida
20 Power & Light.

21 MS. LARSON: No. I said three -- it looked like
22 three different power companies are listed here on the
23 side. It says, "Florida Power & Light," it says, "Tampa
24 Electric," it says -- this is a whole different ball of
25 wax.

1 **MS. HELTON:** My recollection with how that
2 docket got started was it was part of the RTO process when
3 we were looking at regional transmission -- I can't
4 remember now what the O stands for -- and we were looking
5 at all the companies together. And then from that it kind
6 of stemmed off into a rate case for a couple of different
7 companies. And all of those dockets were involved so that
8 you might see companies, different company names listed
9 there, but I think it all dealt with one company in the
10 end.

11 **MS. LARSON:** Alls I'm trying to understand, was
12 it a telephonic deposition or was it done sitting in this
13 room? Like I said, when I was identifying and looking at
14 prior cases, I was looking -- I know that you do
15 depositions or you do testimony right here in this room,
16 but it wasn't done in a telephonic manner. I'm just
17 trying to understand it. Thank you.

18 **MS. HELTON:** Well -- okay. I'm sorry. I didn't
19 mean to add to the confusion.

20 If you look at place down towards the bottom of
21 the page, it says, "By conference call," and it gives a
22 call-in number. So that would have meant that it would
23 have been a telephonic deposition. We haven't had the
24 funds to travel and do depositions face to face in quite a
25 while, so many of our depositions are telephonic

1 depositions.

2 **MS. LARSON:** In a usual manner is it usually one
3 person who's being deposed here at the Commission?

4 **MS. HELTON:** No, ma'am. Often the deponent is
5 not in front of the Commission Staff when the Commission
6 or other parties are deposing them. We have a, someone at
7 the other end who is there who takes an oath from the
8 witness that they are testifying truthfully, but quite
9 often the person doing the deposing is not in the same
10 room with the deponent.

11 **MS. LARSON:** No. But like I told Charles and
12 Larry, my frame of reference is a deposition is a
13 one-on-one proposition. That's what I'm, that's just what
14 I was questioning. You're deposing one individual at a
15 time, not five, and then leaving all the deposition
16 testimony up to one witness as was done here.

17 **MR. COX:** Chairman Graham, if I might clarify
18 just briefly on the two examples that we provided. The
19 one that was for the deposition notices in 090001, Terry
20 Keith and Gerard Yupp, those were both FPL employees. In
21 the other docket there were four panelists. I believe
22 Mike Naeve was a FERC attorney. The other three
23 representatives were representatives from each of the
24 three major Florida IOUs, investor-owned utilities. So it
25 was three different companies for that panel.

1 **CHAIRMAN GRAHAM:** I think with these two
2 documents we have both examples of all from one company
3 and from several different companies.

4 Commissioner Brisé.

5 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

6 This is to Mary. Concerning the time and the
7 place and all of that, so I suppose that all these people
8 had to call in at the same time and get deposed at the
9 same time. So, therefore, they were all being deposed at
10 the same time.

11 **MS. HELTON:** The way I'm reading this notice,
12 that would be what would have happened or what, the
13 process that was contemplated.

14 **COMMISSIONER BRISÉ:** Okay. I just wanted to
15 make sure. Thank you.

16 **CHAIRMAN GRAHAM:** All right. So we will add --
17 Ms. Larson.

18 **MS. LARSON:** I just go -- I just -- I'm just
19 trying to wrap my arms around this one, but I've -- bear
20 with me. Did -- when these five people or four people or
21 ten people, I don't care if you depose 20 people, did you
22 send one man up to the gate who testified? In the example
23 today here is Mr. Hartman, and several depositions --
24 interrogatories were processed by other, other parties,
25 people, you know, the people that worked for FPL.

1 **MS. HELTON:** I can't speak to that directly. I
2 can tell you that after I made a statement this afternoon
3 that it was my, or this morning that it was my
4 understanding that we often did panel depositions, that I
5 had our Staff attorneys who were listening in the other
6 building e-mailing me docket numbers where they had panel
7 depositions, and then also panel testimony before the
8 Commissioners. There may also have been some cases where
9 you took a panel deposition and had only one witness
10 testify before the Commissioners, and there's probably
11 also cases where you had single depositions but panel
12 testimony before the Commissioners. We have done it
13 pretty much all to my knowledge and based on the
14 information that was provided to me.

15 **MS. LARSON:** Well, in any other arena in law
16 this never happens. That's all. That's it. It doesn't
17 happen. Thank you.

18 **CHAIRMAN GRAHAM:** Commissioner Edgar.

19 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
20 Just a brief comment.

21 We had a pretty substantial discussion about
22 Ms. Larson's concerns on this point at the prehearing; I
23 believe it was a week ago today. And I would point out
24 that from the transcript of that prehearing on page 12, I
25 said as Prehearing Officer, and I'll quote, "Having a

1 single witness, dual witnesses together, or having a
2 panel, all of those scenarios and probably some others,
3 have been utilized in prior proceedings, and I'm sure will
4 be in the future, all with the goal of getting the right
5 information and accurate information on the record in
6 whatever way is deemed to be the most efficient and
7 effective. And that's certainly what we will strive for
8 in this proceeding as well."

9 And as we had further discussion, I then said,
10 that at the hearing, which of course is what we've been
11 doing today, that we, meaning the Commission, would
12 continue, and I'm quoting, to work with you, Ms. Larson,
13 at that time within the bounds of what we are able to do.
14 And, Mr. Chairman, I think that we have done that.

15 **CHAIRMAN GRAHAM:** Okay. All right. So we are
16 going to add Exhibit 14 and 15 to the record.

17 (Exhibits 14 and 15 admitted into evidence.)

18 Was that it for Florida Power & Light?

19 **MR. COX:** Yes, Chairman Graham. That's all we
20 had. Thank you.

21 **CHAIRMAN GRAHAM:** Ms. Larson. Nothing?

22 **MS. LARSON:** I just wanted an example. You
23 produced one.

24 **CHAIRMAN GRAHAM:** Okay.

25 **MS. LARSON:** Up until this minute, let me tell

1 you, it was not produced. Okay? That's -- I apologize.
2 I was --

3 **CHAIRMAN GRAHAM:** No. Don't apologize for
4 anything. We're here for answers.

5 Staff?

6 **MR. MURPHY:** Nothing further.

7 **CHAIRMAN GRAHAM:** All right. So I need to make
8 sure -- important posthearing dates. Hearing transcripts
9 are due April 29th of this year and the parties' briefs
10 are due May 9th of this year. So I just want to make sure
11 that everybody is aware of those dates.

12 And if there's nothing else to come before us
13 and everything is in the record, when this hammer here
14 hits this piece of wood, we're adjourned.

15 (Proceeding adjourned at 3:04 p.m.)
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25

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTERS

3 COUNTY OF LEON)

4

5 WE, LINDA BOLES, RPR, CRR, and JANE FAUROT, RPR,
6 Official Commission Reporters, do hereby certify that the
7 foregoing proceeding was heard at the time and place
8 herein stated.

7

8 IT IS FURTHER CERTIFIED that we stenographically
9 reported the said proceedings; that the same has been
10 transcribed under our direct supervision; and that this
11 transcript constitutes a true transcription of our notes
12 of said proceedings.

10

11 WE FURTHER CERTIFY that we are not a relative,
12 employee, attorney or counsel of any of the parties, nor
13 are we a relative or employee of any of the parties'
14 attorneys or counsel connected with the action, nor are we
15 financially interested in the action.

13

14 DATED THIS 29th day of April, 2011.

15

16 Jane Faurot
17 JANE FAUROT, RPR
18 FPSC Official Commission
19 Reporter
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19

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1 capacity payment to assist in funding of the electrical component of the Expanded
2 Facility, which includes the generator, turbine, and related transmission facilities. Tax
3 regulations prohibit SWA from financing the electrical generation component of a solid
4 waste disposal facility with tax exempt debt, so the advanced capacity payment is
5 intended to and will fund the \$56,643,942 budgeted cost of the Expanded Facility's
6 electrical component. The proposed contract will also include energy payments that will
7 provide the Authority with a stream of revenues that which will contribute to the
8 Authority achieving its financial objectives for the Expanded Facility. As a result, the
9 Expanded Facility will provide the Authority and the citizens of Palm Beach County with
10 a financially viable means to dispose of solid waste.

11
12
13

Q. Does this conclude your direct testimony?

A. Yes it does.

SWA/Pellowitz
Parties/Staff Handout
event date 4/25/11
Docket No. 110018


86 h. Please update FPL's original response and responses to a. through f. to include charts that illustrate the outcome.

CPVRR Savings of SWA Contract
(negative values represent savings to FPL's customers)

Capacity/ Capacity Factor	SWA		2011 Assumptions				2010 Assumptions
	Capacity	Capacity Factor	2016	2018	2025	2025	2025
	(MW)	(%)	Avoided Unit	Avoided Unit ¹	Avoided Unit ²	Avoided Unit w/ 2010 costs ^{2,3}	Avoided Unit
	90	85	(\$67)	(\$61)	(\$55)	(\$51)	(\$46)
	90	70	(\$44)	(\$37)	(\$39)		(\$34)
	45	85	(\$13)	(\$19)	(\$23)		(\$27)
	45	70	(\$4)	(\$9)	(\$17)		(\$21)

NOTES:

- ¹ Based on FPL's current assumptions, FPL has a need in 2016. For purpose of responding to this interrogatory, FPL has deferred the 2016 unit to 2018. No additional capacity was added in 2016; therefore this resource plan does not meet the 20% summer reserve margin criteria for the years of 2016 and 2017.
- ² Based on FPL's current assumptions, FPL has a capacity need in 2016 and a capacity need in 2020 and in 2025. For purposes of providing a response to this interrogatory, FPL is assuming that SWA will receive energy payments based on the as-available costs through 2024 and energy payments based on the 2025 avoided unit energy costs from 2025 to 2032. The resource plans assumes a 2016 and 2020 unit are in-service.
- ³ The capacity payments are assumed to be based on the 2010 Standard Offer Contract for a 2025 avoided unit.


Parties/Staff **Handout**
event date 4/25/11
Docket No. 110018