

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida transco"), and their effect on FPL's retail rates

Docket No.: 001148-EI

MOTION FOR LEAVE TO FILE AMENDED PETITION TO INTERVENE

Dynergy Inc. ("Dynergy"), and Dynergy Midstream Services, Limited Partnership ("Dynergy Midstream") pursuant to the Florida Administrative Code Rules 28-106.204 and 25-22.039, hereby files this Motion for Leave to File an Amended Petition to Intervene. Said Amended Petition is attached to and incorporated in this Motion as Exhibit "A." As grounds therefore, Dynergy states:

1. The name and address of the Movant is:

Dynergy Inc. and Dynergy Midstream Services, Limited Partnership
c/o Thomas A. Cloud, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
P.O. Box 3068
Orlando, Florida 32802-3068
(407) 843-8880 Phone
(407) 244-5690 Facsimile

2. Since the filing of Dynergy's Petition to Intervene on January 4, 2001,

APP _____ Dynergy has been able to determine that its wholly owned subsidiary, Dynergy Midstream
CAF _____
CMP _____
COM _____ Services, Limited Partnership, incorporated in the state of Colorado, is a retail customer
CTR _____
ECR _____
LEG _____ of Florida Power & Light Company in Florida. As evidence thereof, a copy of a bill
OPC _____
PAI _____ RECEIVED & FILED
RGO _____
SEC _____
SER _____ FPSC-BUREAU OF RECORDS
OTH _____

DOCUMENT NUMBER-DATE
01551 FEB-26
FPSC-REGISTRATION REPORTING

rendered to Dynegy Midstream is attached and incorporated in this Motion as Exhibit "B."

3. Dynegy had also identified commercial interests in the state of Florida that were not noted in its initial Petition. As is more fully explained in its Amended Petition, Dynegy is a developer of industrial cogeneration facilities. The retail rates charged to an industrial customer by its utility (in this case FPL) are critical factors when evaluating the viability of a cogeneration facility. The retail rates constitute the "price to beat" because the cost of cogenerated power must be below the utility's retail rates or the industrial has little motivation to pursue self-generation. Because FPL's retail rates may be impacted by this proceeding, Dynegy's ability to compete for industrial cogeneration facilities in Florida will be directly impacted by the Commission's decisions in this case.

4. Amendments to pleadings are liberally permitted and a party must be given an opportunity to amend its pleadings, particularly where these pleadings relate to establishing standing to be granted third-party status in administrative proceedings. See 2 Fla.Jur. 2d, Administrative Law, §§ 238 and 243, pages 229 and 234; University Community Hospital v. Department of Health and Rehabilitative Services, 610 So. 2d 1342 (Fla. 1st DCA 1992); and Manisota-88, Inc. v. State Department of Environmental Regulation, 417 So. 2d 846 (Fla. 1st DCA 1982).

5. As a customer, Dynegy and its wholly owned subsidiary should be allowed to intervene. Dynegy represents the interests of its wholly owned subsidiary in these matters. As such, Dynegy stands at least in the same shoes as Florida Industrial Power

Users Group, which has already been accorded the right to intervene in this proceeding. Dynegy, however, is not a member of the Florida Industrial Power Users Group and the Florida Industrial Power Users Group will not necessarily protect Dynegy's interests. Furthermore, the suggestion that because the office of public counsel has intervened, no customer should be allowed to intervene is pure nonsense. The office of public counsel represents citizens, and there is no preemption of intervention on behalf of customers under §350.0611, Florida Statutes.

6. Furthermore, there is a significant body of case law in Florida that customers have standing to bring lawsuits in Circuit Court to challenge municipal rates, applying substantially the same standard applicable to this proceeding to determine standing. See, e.g., Mohme, et al. v. City of Cocoa, 328 So. 2d 422 (Fla. 1976).

7. Dynegy and its subsidiary's interests will be directly affected by the level of retail rates in Florida. Therefore, Dynegy and its subsidiary will be directly and substantially affected by the action the Commission takes in this docket.

WHEREFORE, Dynegy and Dynegy Midstream request that the Florida Public Service Commission grant its Motion for Leave to File the Amended Petition attached to and incorporated in this Motion as Exhibit "A."



Thomas A. Cloud, Esquire
Florida Bar No. 293326
Gray, Harris & Robinson, P.A.
201 East Pine Street, Suite 1200
Orlando, Florida 32802-3068
Ph. (407) 843-8880
Fax: (407) 244-5690

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to the following parties of record and interested parties, this 2nd day of February, 2001:

Florida Power & Light Company
William G. Walker, III
9250 West Flagler Street
Miami, Florida 33174

Florida Industrial Power Users Group
c/o John W. McWhirter, Jr.
400 N. Tampa Street, Ste 2450
Tampa, Florida 33602

Robert V. Elias
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oaks Boulevard
Tallahassee, FL 32399-0850

Office of Public Counsel
Roger Howe
111 West Madison Street, # 812
Tallahassee, Florida 32399

McWhirter Reeves Law Firm
Vicki Gordon Kaufman
Joseph A. McGlothlin
117 South Gadsden Street
Tallahassee, Florida 32301

Matthew M. Childs, Esq.
Steel Hector & Davis, LLP
215 South Monroe St. #601
Tallahassee, FL 32301



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Florida Power & Light
Company's proposed merger with
Entergy Corporation, the formation
of a Florida transmission company
("Florida transco"), and their effect
on FPL's retail rates

Docket No.: 001148-EI

AMENDED PETITION TO INTERVENE

Dynergy Inc. ("Dynergy"), and Dynergy Midstream Services, Limited Partnership,
its wholly owned subsidiary ("Dynergy Midstream"), pursuant to the Florida
Administrative Code Rules 25-22.039 and 28-106.205, hereby file their Amended
Petition to Intervene in this docket. As grounds therefore, Dynergy and Dynergy
Midstream state:

1. The name and address of the Petitioners is:

Dynergy Inc. and Dynergy Midstream Services, Limited Partnership
c/o Thomas A. Cloud, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
P.O. Box 3068
Orlando, Florida 32802-3068
(407) 843-8880 Phone
(407) 244-5690 Facsimile

2. All pleadings, orders and correspondence should be directed to Petitioner's
representatives as follows:

Thomas A. Cloud, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
P.O. Box 3068
Orlando, Florida 32802-3068



(407) 843-8880 Phone
(407) 244-5690 Facsimile

and

David Cruthirds, Esquire
Vice President and Regulatory Counsel
Dynergy Inc.
1000 Louisiana Street, Suite 5800
Houston, Texas 77002-5050
(713) 507-6785 Phone
(713) 507-6834 Facsimile

3. In this docket, the Florida Public Service Commission will investigate the earnings of Florida Power & Light Company (“FPL”), including the effect of the merger of FPL with Entergy Corporation (“Entergy”).

4. Dynergy is a corporation organized and existing under the laws of the State of Illinois, with corporate headquarters located in Houston, Texas. Dynergy is one of the country’s leading marketers of energy products and services, occupying a significant position in power generation and marketing. Dynergy markets power in the Florida market. Dynergy Midstream is a wholly owned subsidiary of Dynergy and is one of the country’s leading manufacturers and marketers of natural gas liquids and related services. Dynergy Midstream has facilities and operations in Florida, including natural gas liquid terminals in Tampa and at Port Everglades near Fort Lauderdale.

5. Dynergy is a customer of both FPL and Entergy, and purchases electric transmission services from both entities. Such electric transmission services represent one of Dynergy’s largest variable costs.

6. Dynegy is also a competitor of FPL in the wholesale power market in Florida.

7. Dynegy has announced the development of Palmetto Power in Osceola County and another merchant plant in Osceola County. Both of these projects will require the purchase by Dynegy of electric transmission services from FPL.

8. The merger and subsequent market power created by the merger will:

- (a) increase the ability of the merged entity to discriminate against customers, like Dynegy;
- (b) could result in increased prices, and;
- (c) will reduce or eliminate the availability of electrical transmission services to such customers.

9. Furthermore, as part of the relief granted in this case, the Commission could determine to set retail rates for FPL in such a manner or at such levels as would lead to changes in wholesale and/or transmission rates charged by FPL to Dynegy.

10. Dynegy's ability to effectively compete will be directly affected by the adequacy, availability, reliability and cost of electric transmission services provided by FPL, as well as the electricity rate which could be established if the merger is approved. Therefore, Dynegy will be directly and substantially affected by any action the Commission takes in this docket.

11. Dynegy Midstream is a retail customer of FPL and purchases retail electric service from FPL at its facility at Port Everglades. As such, electric service represents one of Dynegy Midstream's largest variable costs.

12. Dynegy is also a developer of industrial cogeneration facilities. The viability of industrial cogeneration projects depends in large part upon the retail rates charged by an industrial's electric utility. The retail rate in essence becomes the "price to beat" against which the cogen developer must compete. Other things being equal, a cogen developer such as Dynegy must be able to build a cogeneration facility that enables the industrial customer to save money on its combined cost of electric power and steam. The cogen developer must be able to deliver power at a cost below the retail rates charged by the utility (in this case FPL) or the industrial will have little reason to pursue self-generation. FPL's industrial rates are relevant subject matter of this proceeding. Dynegy's ability to compete for industrial cogeneration projects will be directly affected by the Commission's decision in this case on that issue. This direct impact on Dynegy should provides additional justification to grant Dynegy's intervention as a party in this case.

13. Disputed issues of material fact include, but are not limited to, the following:

- (a) The effect of the proposed merger on FPL's earnings;
- (b) The effect of the proposed merger on FPL's market power;
- (c) The effect of the proposed merger on competition in Florida's wholesale power market;

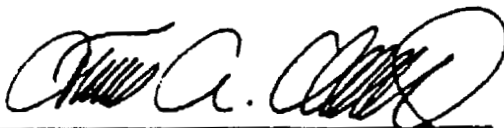
- 407 422 5690 P. 10 of 11
- (d) The effect of the proposed merger on the adequacy, availability, reliability, and cost of electric transmission capacity in the Florida market;
 - (e) The appropriate allocation of FPL revenues between retail and wholesale customers; and
 - (f) The appropriate acquisition adjustment to be made in setting retail rates for FPL retail customers after the merger.

14. Ultimate facts include, but are not limited to, the consideration of the merger's impact in assessing FPL's earnings and market dominance.

15. The applicable statutes and rules, include, but are not limited to:

Chapter 366, Florida Statutes
Fla. Admin. Code Chapter 25
Fla. Admin. Code Rule 28-106.

WHEREFORE, Dynegy and Dynegy Midstream request that the Florida Public Service Commission grant Dynegy and Dynegy Midstream's Petition to Intervene and accord them full party status in this docket.



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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to the following parties of record and interested parties, this 1st day of February, 2001:

Florida Power & Light Company
William G. Walker, III
9250 West Flagler Street
Miami, Florida 33174

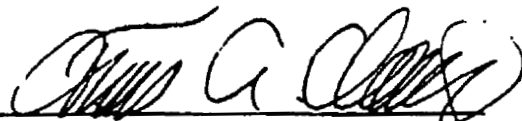
Office of Public Counsel
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111 West Madison Street, # 812
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Florida Power & Light Company
PO Box 025378
Miami, FL 33102

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Please request changes on the back.
Notes on the front will not be detected.

I added my donation for the Care to Share Energy
Fund to help those in need. (Mark 'X' in box)

\$1 \$2 \$5 \$10 Other _____

PLEASE FILL IN TOTAL AMOUNT PAID

\$ _____

Make check payable to FPL in U.S. funds
and mail along with this coupon to:

FPL
GENERAL MAIL FACILITY
MIAMI FL 33188-0001

T.B

7101

FBWMDJNQ *** AUTO **CO 0204
#25786438Q3348568 236903

DYNEGY MIDSTREAM SERVICES
LP
1000 LOUISIANA ST STE 5800
ATTN: SHIRLEY MIKEL LOC 6342 F
HOUSTON TX 77002-5006

Account Number	Balance Now Due	Next Scheduled Read Date
88252-58533	\$1,458.68	DEC 19 2000

FOLD OR INCORPORATION BEFORE TEARING

CUSTOMER STATEMENT

Statement Date: NOV 28 2000
Customer Name: DYNEGY MIDSTREAM SERVICES
Service Address: 800 SE 28TH ST

Account Number: 68252-58533

Service Dates: OCT 26 00 to NOV 28 00

Service Days: 33

NEXT SCHEDULED READ DATE: DEC 28 2000

Account	Balance	Change	Balance	Change	Balance	Total Now Due (=)
848.41	848.41 CR	0.00	0.00	1,458.68	DEC 19 2000	\$1,458.68

Meter Reading

Meter 1V2880

Current Reading: 6863
Previous Reading: 6427
KWH Comment: 80
KWH Used: 13920

Demand Reading: 1.40
KW Comment: 80.00
Demand KW: 84

Energy Usage

	Last Year	This Year
KWH This Month	12720	13920
Service Days	33	33
KWH/Day	385	421

Account Activity

Previous Statement Balance: 848.41
Payment Received - THANK YOU: 848.41 CR

Billing for Electric Use on Rate: GSD-1 GENERAL SERVICE DEMAND

Electric Service Amount: 1,187.12**
Gross Receipts Tax Increase: 12.78
Franchise Charge: 66.26
Utility Tax: 104.53
Florida Sales Tax: 88.59

Current Electric Charges: 1,458.68

TOTAL NOW DUE:

\$1,458.68

Messages

- A late payment charge of 1.5% will apply if not paid by DEC 19, 2000.
- From all of us at FPL, thank you for your business in 2000. Have a safe and happy holiday season!

Batch Date: 12/6/00
Business Unit: 30003
Control Group: 12042
Reader No: 08892126880

Pat Tringali

DEC 4 2000

DYNEGY A DIVISION OF

USEFUL TELEPHONE NUMBERS:
Customer Service: (854) 581-5658
Outside Florida: 1-800-226-3545
To Report Power Outages: 1-800-4OUTAGE (468-8243)
Deaf/and/or Speech Impaired: 1-800-437-5554 (TTY/TOPI)

COPY



- Record hierarchy
- BUSINESS_UNIT - Bu
- VOUCHER_ID - Vouch
- PYMNT_CNT - Paymen
- PYMNT_ID - Payment
- PYMNT_TYPE - Docum
- PAID_AMT - Paid Amou
- PYMNT_GROSS_AMT
- DUE_DT - Due Date
- DSCNT_PAY_AMT - P
- DSCNT_DUE_DT - D
- SCHEDULED_PAY_D
- PAID_AMT_GROSS -
- PAID_AMT_DSCNT -
- CURRENCY_PYMNT -
- RVL_DTTM - Revaluat
- PYMNT_SELCT_STAT
- REMIT_SETID - Remit
- REMIT_VENDDR - Re
- VNDR_LOC - Vendor L
- REMIT_ADDR_SEQ_M
- BANK_SETID - Bank S
- BANK_CD - Bank Code
- BANK_ACCT_KEY - B
- PYMNT_ACTION - Pay
- PYMNT_METHOD - Pa

Unit	Group	Voucher	Impctum	Invc Date	Gross Amt	Pymnt Date	
30003	00652	00069575	6825258533/1189	1999-10-27	24.40	1999-10-27	Pe
30003	007086	00075898	6825258533/1289	1999-11-28	1330.85	1999-11-29	Pe
30003	007898	00086557	6825258533/0100	2000-01-28	1316.09	2000-01-28	Pe
30003	008003	00086751	6825258533/0100	2000-01-28	1316.09	2000-01-28	Pe
30003	008003	00086752	3274273220/0100	2000-01-28	13.45	2000-01-28	Pe
30003	008381	00091233	3274273220/0200	2000-02-29	13.80	2000-02-29	Pe
30003	008381	00091234	6825258533/0200	2000-02-28	180.72	2000-02-28	Pe
30003	008737	00095798	6825258533/0300	2000-03-29	1397.17	2000-03-29	Pe
30003	008737	00095800	3274273220/0300	2000-03-29	14.30	2000-03-29	Pe
30003	008158	00100086	3274273220/0400	2000-04-27	12.80	2000-04-27	Pe
30003	009159	00100097	6825258533/0400	2000-04-27	1247.24	2000-04-27	Pe
30003	009436	00103009	3274273220/0500	2000-05-26	12.37	2000-05-26	Pe
30002	009436	00103010	6825258533/0500	2000-05-28	1180.28	2000-05-26	Pe
30003	009849	00107132	3274273220/0600	2000-06-27	12.88	2000-06-27	Pe
30003	009849	00107133	6825258533/0600	2000-06-27	1309.24	2000-06-27	Pe
30003	010205	00110750	6825258533/0700	2000-07-27	1374.31	2000-07-27	Pe
30003	010205	00110751	3274273220/0700	2000-07-27	12.81	2000-07-27	Pe
30003	010742	00115245	3274273220/0800	2000-08-28	12.55	2000-08-28	Pe
30003	010742	00115246	6825258533/0800	2000-08-28	1229.30	2000-08-28	Pe
30003	011148	00118813	3274273220/0900	2000-09-27	12.72	2000-09-27	Pe
30003	011148	00118814	6825258533/0900	2000-09-27	1199.45	2000-09-27	Pe
30003	011597	00122743	3274273220/1000	2000-10-26	12.88	2000-10-26	Pe
30003	011597	00122744	6825258533/1000	2000-09-27	848.41	2000-09-27	Pe
30003	012042	00128801	6825258533/1100	2000-11-28	1868.52	2000-11-28	Pe
30003	012042	00128801	3274273220/1100	2000-11-28	17.38	2000-11-28	Pe

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