

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power & Light Company.

Docket No. 020262-EI

In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power & Light Company.

Docket No. 020263-EI

Dated: June 7, 2002

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FACT REPLY to FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO PETITION FOR LEAVE TO INTERVENE AND SUGGESTION FOR DELAY

The Florida Action Coalition Team ("FACT"), files this Reply to Florida Power & Light Company's (FPL) May 30, 2002 Response to FACT's petition for Leave to Intervene as a full party respondent in these proceedings, and states as follows:

1. There are four intervenor parties to each of these two dockets, all of them independent generators whose substantial interest in the resolution of these dockets, or their "standing," hinges primarily, if not entirely, on their claims or potential claims that they could supply the capacity whose need is to be determined in these dockets more cost-effectively than the FPL self-build option, not on their substantial interest as customers in seeing their rates as low as reasonably possible through the need determination process. FPL did not challenge these parties' petitions seeking intervention presumably on the assumption that Rule 25-082, F.A.C., in conjunction with Section 403.419, F.S., confers "automatic" standing in need determination proceedings. Given this abundance of corporate generating competitors in these cases, one might wonder why FPL is afraid of having its residential customers represented in these proceedings.

2. FPL's objections seeking to keep FACT out of this case seem to be two-fold: (1) FACT has shown no "substantial interest" to justify its intervention and (2) the proceedings are "out" due to the supplemental RPFs and granting FACT's intervention would apparently be a

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wasted effort on the Commission's part at this point. Additionally, FPL goes to great lengths to deride FACT's suggestion for a delay in the need determinations pending a complete review and the possible modification of the "bidding rule." None of FPL's objections have merit.

3. Addressing FPL's suggestion for delay objections first, it was clear, or should have been clear even to the casual reader, that FACT knew it had no right to demand such a delay in the need determination dockets as substantive relief, but was merely offering the postponement as a seemingly logical way to address the prudence of approving large capacity additions in the face of pending potential revisions to the controlling bidding rule. That such a delay might have been both beneficial and tolerable was bolstered by the fact that FPL had successfully obtained a suspension of the need determination statutory "clock" while entertaining the supplemental RFPs.

FACT's suggestion for further delay of the need determination proceedings pending the coming modification of the bidding rule, which modifications might make the rule fairer and increase the probability that lower cost generation could be obtained to the advantage of FPL's customers, made sense when proposed and still makes sense now, irrespective of whether there is a statutory or rule basis for compelling such a delay. The FACT "suggestion" was just that, is completely severable from its underlying petition seeking intervention and the Commission should ignore all FPL's objections to the "suggestion" when considering FACT's party status.

4. Rule 25-22.039, F.A.C. reads as follows:

Intervention. Persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform Rule 28-106.201(2) and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

To address FPL's concern that FACT does, in fact, have members who are FPL customers and, therefor, have a substantial interest through the rates they pay in seeing FPL obtain new generation in the most efficient and least-cost manner, FACT alleges that the following individuals, although not an exclusive listing in this category, are both members of FACT and residential customers of FPL, who, furthermore, desire that FACT represent their interests in these dockets:

Rhoda and Robert Franklin  
4970 Sable Palm Blvd.  
Tamarac, FL 33319

Walter Feinman  
1550 NW 80 Ave.  
Margate, FL 33063

Jan Cooper  
4302 Martinique Circle  
Coconut Creek, FL 33066

Rita Warren  
20120 NE 2 Ave.  
No. Miami Beach, FL 33179

Burton Greenfield  
1545 Sea Grape Way  
Hollywood, FL 33019

Erika Lowenthal  
156 NW 80 Ave.  
Margate, FL 33063

5. The FACT members listed in paragraph 4 are customers of FPL and pay monthly bills to FPL consisting, in part, of base rates, fuel adjustment charges and other charges reflecting FPL's purchase of generating capacity and energy from third-parties. The decisions reached in these dockets, namely whether the capacity being sought is necessary in the first instance, and secondarily, if it is necessary, whether it will be obtained most efficiently and at the least-cost by a FPL self-build option or by contract with a successful RFP participant, will necessarily impact

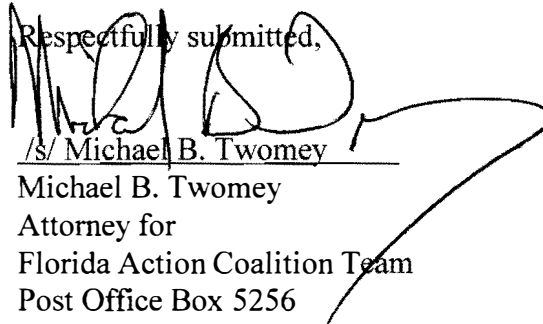
the overall electric bills of the listed FACT members and of all FPL customers. FACT maintains that its initial petition was sufficient to allege standing. However, the listing of some its members who are customers of FPL demonstrates more than sufficient allegations of standing to meet the requirements of the Commission's intervention rule and the applicable case law, including Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981).

6. FPL's argument that FACT should be denied intervention because "the proceedings in which FACT seeks to intervene have been held in abeyance," that "[t]hose proceedings may never be reinitiated," and since "FPL may withdraw one or both of its petitions for need determination and thereby render FACT's Petition moot, and that no action will occur in these proceedings in the interim, the best course of action would be to deny FACT's Petition, without prejudice to its later re-filing for intervention if the proceedings resume" is nothing short of nonsensical. The correct, and legal, course of action is to grant FACT's intervention. If FPL, in fact, needs the capacity it claims it does and subsequently awards the construction of both of the units to one or more of the RFP participants, then it may find it necessary to withdraw its petitions in these dockets and file joint need determinations with the winning participants in separate dockets. That contingency, whether likely or not, is no basis for denying FACT's present intervention. FPL and the other intervenors remain in the case irrespective of its current "suspended" status, FACT understands that it must "take the case as it finds it," and understands and accepts that there is the potential that no further activity in these dockets will take place.

7. If FACT is granted party status now it will be in a position of exercising its rights as a party, engaging in discovery and other activities afford parties, immediately upon the resumption of formal activities in these dockets. Aside from being logically and legally baseless, FPL's demand that FACT's intervention be denied now "without prejudice to its later re-filing

for intervention if the proceedings resume” would clearly and unnecessarily disadvantage FACT and its FPL customer members by the necessity of refileing and serving its petition. Not only would such a filing compel additional and unnecessary expense, more importantly, it would delay approval of FACT’s party status, and, thus, its ability to function as a full party, in dockets with an already constrained statutory time line.

WHEREFORE, Florida Action Coalition Network respectfully requests that this Commission: (1) deny FPL’s request that FACT’s petition to intervene be denied; and (2) grant FACT intervenor status in these consolidated dockets as a full party respondent for the purpose of specifically representing its FPL customer members listed in the body of this pleading and representing generally the interests of all its members who are retail customers of FPL.

Respectfully submitted,  
  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of this petition has been served by

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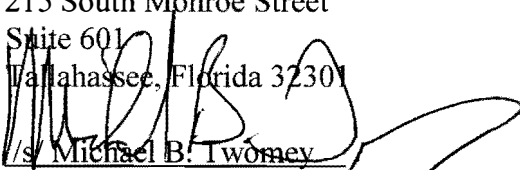
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