

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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COMMISSION
CLERK

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: Filed June 26, 2002

REQUEST FOR LEAVE TO AMEND PETITION TO INTERVENE AND
AMENDED PETITION TO INTERVENE

Pursuant to Section 120.569 and 120.57(1), Florida Statutes, Sections 403.519 and 366.07, Florida Statutes, Rules 25-22.039, 25-22.082 and 28-106.205, Florida Administrative Code, the Florida Action Coalition Team ("FACT"), through its undersigned attorney, files its Request for Leave to Amend Petition to Intervene and Amended Petition to Intervene, and in

AJUS _____
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CTR _____
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OPC 1 _____
MMS _____
SEC T _____
OTH Teach dht _____

1. The name and address of the affected agency are:

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

2. The name and address of the petitioner are:

Florida Action Coalition Team
Post Office Box 100
Largo, Florida 33779-0100

3. All pleading, motions, orders and other documents directed

to the petitioner should be served on:

None 7/01/02

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4. Florida Power & Light Company (“FPL”) is an investor-owned electric utility subject to the jurisdiction of the Florida Public Service Commission. FPL provides retail electric service to customers throughout much of the State of Florida.

5. Florida Action Coalition Team (“FACT”) is a statewide, non-partisan grassroots organization representing the interests of its advocate members in taxpayer, consumer, healthcare, environmental and public utility issues, among others. Among FACT’s members are a substantial number who are retail residential customers of FPL, whose need for the power plant capacity expansions in Martin and Manatee Counties are being considered in the above-styled dockets.

I. Request for Leave to Amend Petition to Intervene

6. Pursuant to Sections 120.569 and 120.57, F.S. and Rule 28-106.204, F.A.C., FACT moves this Commission to grant it leave to amend its Petition for Leave to Intervene and

Suggestion for Delay, filed in these dockets on May 20, 2002. By way of background and in support of this motion, FACT states the following:

7. In its May 30, 2002 Florida Power & Light Company's Response to FACT's Petition to Intervene and Suggestion for Delay, FPL argued that "the Commission should deny FACT's Petition to Intervene (without prejudice to its re-filing in the event the proceedings are reconvened) or in the alternative should defer ruling on the Petition." Furthermore, FPL urged to the Commission that "[i]n either case, there is no occasion to delay the supplemental RFP as FACT suggests, and any such request should be denied."

8. FPL's main thrust in requesting that the Commission not grant FACT intervenor status appears to be that the FACT request to intervene is allegedly moot by virtue of the fact that FPL has issued supplemental RFPs in connection with the capacity whose need determinations were being sought in these two dockets, and, further, that the Commission has "suspended" the procedural clock for handling the need determinations pending the outcome of the supplemental RFP process. FACT considers FPL's argument on this point to be legally and logically groundless and, consequently, FACT will not attempt to "cure" FPL's objections on this point. Suffice it to say that FACT understands it takes these cases as it finds them, as pointed out by FPL in Paragraph 10 of its May 30 Response. If the proceedings in these dockets are never reinitiated, then there will have been no harm to FACT, or any other party, by the Commission presently granting FACT's intervention. (Clearly, it will require more time and expense on FACT's part, as well as that of the Commission and FPL, for the Commission to presently deny FACT's intervention, with leave to later refile, than it would to merely grant the intervention now.) Conversely, FACT will suffer the detriment of further lost time in an already quick-paced

docket if it is forced to petition for intervention at a later date and, then, once again wait FPL's opportunity to respond. In short, the need determination proceedings could be fully concluded before FACT's intervention could be granted if it is forced to wait to see if the proceedings are, in fact, reinitiated. Finally, it is clear that other activities continue in these dockets, to include the recent CPV Gulfcoast Request for Leave to Amend Petition to Intervene and Amended Petition to Intervene into Need Determination Proceeding.¹ The Commission should grant FACT's intervention without regard to FPL's mootness argument.

9. FPL also objected to FACT's "suggestion" that the supplemental RFPs be delayed pending an opportunity to revise the so-called "bidding rule," although it does not appear this suggestion on FACT's part was a basis for FPL's argument that FACT should not be granted intervenor status at this time. Nonetheless, in an effort to calm or limit FPL's overall objections, FACT will file its Amended Petition without such a suggestion for delay. After all, it should have been clear from FACT's initial petition that FACT knew it had no statutory or other right to demand such a delay and was merely suggesting the same, if at all possible, as a common sense approach preceding the approval of the need of such large and expensive capacity additions. The need for a "better" bidding rule prior to making long term, billion dollar capital decisions remains obvious.

¹ As noted by CPV Gulfcoast Ltd. in its June 7, 2002 Request for Leave to Amend Petition to Intervene and Amended Petition to Intervene into Need Determination Proceeding, filed in Docket No. 020263-EI, it is only the procedural schedule that has been suspended in these two dockets with the recognition by the Prehearing Officer, stated in granting FPL's request, that "[i]n the interim, all other outstanding motions and procedural issues that arise will be addressed in due course, but expeditiously."

10. While not an apparent outright argument for denying current intervenor status to FACT, FPL, in the first footnote to its Response, observed that FACT had simply claimed to have standing by virtue of members that are residential retail customers of FPL without stating more. In an effort to comfort FPL on this point, FACT has listed the names and addresses of six individuals or couples FACT alleges are both FACT members and residential customers of FPL. Such an allegation should be more than sufficient to meet the requirements of Rule 25-22.039, F.A.C., which states:

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. (Emphasis supplied.)

Moreover, FACT has attempted to more specifically allege that the FACT member FPL customers have substantial interests that will be subject to determination or will be affected through these proceedings. Specifically, it should be clear that the FACT member FPL customers will necessarily be forced to pay higher FPL electric rates if the Commission approves the need for expensive electric power plants that are not “the most cost-effective alternative available.” Likewise, it is clear that these, and all, FPL customers will pay more in their electric rates if there were, or are, more economically reasonable conservation measures which might mitigate the need for the proposed power plants, but which were not taken. Additionally, it

would be hard to argue that reduced electrical system reliability and integrity, if translated to increased outage rates, would not have adverse economic consequences for FPL customers.

11. On the point of associational standing, the Florida Supreme Court has held in connection with an administrative rule challenge that trade and professional associations can initiate rule challenges under Section 120.56, F.S. provided they meet certain requirements. In reaching this result, the Court noted that the “[e]xpansion of public access to the activities of governmental agencies was one of the major legislative purposes of the new Administrative Procedure Act.” Florida Home Builders Ass’n v. Department of Labor and Employment Security, 412 So.2d 351 (Fla. 1982). The Court found that to deny such representation would result in restricted public access to the administrative processes established in the Florida Administrative Procedure Act, even in cases in which some or all of the members of a given association could demonstrate individual standing in such a case. Subsequently, District Courts of Appeal have expanded the applicability of Florida Home Builders to groups that are not strictly trade or professional associations. See: Southwest Florida Water Mgmt. District v. Save the Manatee Club, Inc., 773 So.2d 594 (Fla. 1st DCA 2000); Friends of the Everglades, Inc. v. Bd. Of Trs. of Internal Improvement Trust Fund, 595 So.2d 186 (Fla. 1st DCA 1992); and Ward v. Bd. Of Trs. of Internal Improvement Trust Fund, 651 So.2d 1236 (Fla. 4th DCA 1995). There is no basis for a separate standard, nor has FACT found one, for associational standing in other types of cases held pursuant to Chapter 120, F.S., including power plant need determinations per the provisions of Section 403.519, F.S. This Commission has often granted party status to a number of non-trade and non-professional associations, chief among them the Legal Environmental Assistance Foundation.

12. The fundamental purpose of the need determination proceeding is to serve as the sole forum for the determination of the need for a given plant, including considerations of “electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available.” Additionally, the Commission is specifically required to consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the proposed plant. These matters, as discussed in the preceding paragraph, each must invariably, depending upon how they are decided, impact the cost of service to retail customers, especially when the Commission’s determination of need in such cases “shall create a presumption of public need and necessity” with respect to the proposed power plant. Individual utility customers have substantial economic, and other interests, in whether or not hugely expensive power plants are approved by this Commission, whether the plants approved are the most cost-effective alternative, whether the approval will result in an electric system with adequate reliability and integrity, and whether the utility applicant has employed all the conservation measures that could have possibly mitigated the need for the proposed plant. There is clearly no prohibition against individual FPL customers intervening in these need determination cases and, likewise, there is no prohibition against an association representing those individual interests in a collective and more cost-effective manner.

13. As described above, the changes contained in FACT’s Amended Petition are intended to either address or cure the objections raised by FPL in its May 30, 2002 Response.

14. For these reasons, FACT moves the Commission to grant it leave to amend its Petition for Leave to Intervene and Suggestion for Delay, filed in these dockets on May 20, 2002. Provided leave to amend is granted, FACT's Amended Petition to Intervene is set forth below.

II. Amended Petition to Intervene of FACT

15. Pursuant to Sections 403.519, 120.569, and 12057(1), F.S., and Rules 25-22.082, 28-106.201, and 28-106.205, F.A.C., FACT requests the Commission grant it permission to intervene in and participate as a full party to this proceeding. In support thereof, FACT states the following:

16. Petitioner, Florida Action Coalition Team ("FACT") is a statewide, non-partisan grassroots organization representing the interests of its advocate members in taxpayer, consumer, healthcare, environmental and public utility issues, among others. Among FACT's members are a substantial number who are retail residential customers of FPL, whose need for the power plants in Martin and Manatee Counties is being considered in the above-styled dockets. FACT members, who are also retail residential customers of FPL, include, but are not limited to the following:

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

17. The FACT members listed above, and all FACT members who are also customers of FPL, 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 level of these rates may be increased by and, thus, be adversely impacted by the decisions the Commission makes in these dockets. The cost of electricity represents one of the larger variable costs in many of these members' household budgets and the level of FPL's future rates will depend upon whether the Commission approves the self-build projects sought by FPL in these dockets, determines that one or more of the RFP projects is more cost-effective, or determines that some mix of the supply side and demand side alternatives will best meet the capacity needs of FPL's customers and in the least-cost manner. Furthermore, the Commission, by statute, must consider whether FPL took all the conservation measures available, or reasonably available to it, so as to mitigate the need for the plants whose approval is being sought. Failure to implement cost-effective conservation measures in lieu of building new power plants will, by definition, increase customer rates more than is otherwise necessary. Therefore, FACT and its FPL customer members will be substantially affected by any action the Commission takes in this docket and they meet the two-prong test of AgriCo Chemical Company v. Department of

Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981) for proving substantial interests has been met.

18. FACT is an organization, or association, that attempts to represent consumer or customer interests in a number of areas, including telecommunications and electric utility matters. FACT members who are also customers of FPL are desirous of FACT representing their interests in these proceedings, as opposed to these customers having to go to the time and expense of trying to protect their interests individually. The relief being sought in these dockets - whether the plants are necessary, the most cost-effective, and whether all appropriate conservation measures have been taken - is the type appropriate for associational representation. Florida Home builders Ass'n v. Department of Labor and Employment Security, 412 So.2d 351 (Fla. 1982).

III. Disputed Issues of Fact and Law

19. The following issues have been identified by FACT as disputed issues of material fact:

- a. Is there a need for the proposed Manatee and Martin units, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, F.S.?
- b. Is there a need for the proposed Manatee and Martin units, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, F.S.?
- c. Has FPL met the requirement of Rule 25-22.082, F.A.C., by conducting a fair bidding process?

- d. Are the proposed Manatee and Martin units the most cost-effective alternatives available, as this criterion is used in Section 403.519, F.S.?
- e. Are there any conservation measures taken by or reasonably available to FPL which might mitigate the need for the proposed power plants?
- f. What action should the Commission take to ensure that FPL contracts with the suppliers of the "most cost-effective" options available to FPL's ratepayers?

20. The following has been identified by FACT as an ultimate fact:

- a. FPL has failed to demonstrate that the proposed Manatee and Martin units are the most cost-effective means of meeting its capacity needs.

WHEREFORE, Florida Action Coalition Network requests that this Commission:

(1) Grant it leave to amend its Petition for Leave to Intervene and Suggestion for Delay, filed in these dockets on May 20, 2002, and (2) grant it intervenor status in these consolidated dockets as a full party respondent on behalf of its listed FPL customer members and other FACT FPL customer members.

Respectfully submitted,


s/ Michael B. Twomey

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Florida Action Coalition Team
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CERTIFICATE OF SERVICE

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

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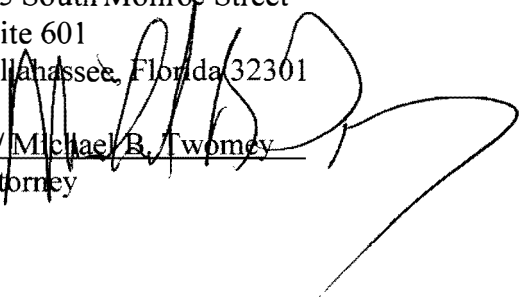
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