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Sent: Tuesday, July 01, 2008 3:41 PM
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Subject: Electronic Filing for Docket Nos. 080203-EI; 080245-EI; and, 080246-EI - FPL's Opposition to Request for Reconsideration of Order Denying Intervention of Panagioti Tsolkas.
Attachments: FPL Response to Tsolkas.7.1.08.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 080203-EI Petition to Determine Need for West County Energy Center Unit 3 Electrical Power Plant, by Florida Power & Light Company.

Docket No. 080245-EI Petition for Determination of Need for Conversion of Riviera Plant in Palm Beach County, by Florida Power & Light Company.

Docket No. 080246-EI Petition for Determination of Need for Conversion of Cape Canaveral Plant in Brevard County by Florida Power & Light Company.

c. This document is being filed on behalf of Florida Power & Light Company.

d. There are a total of six (6) pages in the document.

e. The document attached for electronic filing is Florida Power & Light's Opposition to Request for Reconsideration of Order Denying Intervention of Panagioti Tsolkas.

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DOCUMENT NUMBER - DATE

05710 JUL -1 08

FPSC-COMMISSION CLERK

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7/1/2008

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's Petition to Determine Need for West County Energy Center Unit 3 Electrical Power Plant))))	Docket No. 080203-EI
In re: Florida Power & Light Company's Petition to Determine Need for Conversion of Riviera Plant))))	Docket No. 080245-EI
In re: Florida Power & Light Company's Petition to Determine Need for Conversion of Cape Canaveral Plant))))	Docket No. 080246-EI
<hr/>		Filed: July 1, 2008

**FLORIDA POWER & LIGHT COMPANY'S
OPPOSITION TO REQUEST FOR RECONSIDERATION
OF ORDER DENYING INTERVENTION OF PANAGIOTI TSOLKAS**

Florida Power & Light Company ("FPL") respectfully responds in opposition to the June 27, 2008 filing by Panagioti Tsolkas ("Tsolkas"), "as an individual, and on behalf of the Palm Beach County Environmental Coalition ("PBCEC")," requesting to "add Alexandria Larson, as an individual under the Coalition intervenor status on these consolidated dockets."

Intervention was denied to Mr. Tsolkas and PBCEC pursuant to the Prehearing Officer's Order Denying Intervention issued on June 17, 2008. The timing of Mr. Tsolkas's June 27 filing suggests that he may be seeking reconsideration of that Order, which should be denied for reasons stated below. In addition, the request to "add Alexandria Larson, as an individual under the Coalition intervenor status" should be denied because there is no "coalition intervenor status" to which she can be added. To the extent Mr. Tsolkas's June 27 request could be construed as a request filed by Ms. Larson to intervene in her individual capacity, the request is not timely. For these and other reasons, described below, there is no legal basis for granting the relief requested in Mr. Tsolkas's June 27 filing.

DOCUMENT NUMBER-DATE

05710 JUL-18

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I. The Order Denying Intervention of Mr. Tsoikas and PBCEC is Correct, and the Request for Reconsideration Should be Denied.

Mr. Tsoikas's request for intervention on behalf of himself and PBCEC was properly denied by the Prehearing Officer in a detailed written order, relying upon correct legal authority, issued on June 17, 2008. The Order denied intervention stating:

The petition to intervene fails to demonstrate that either Mr. Tsoikas or PBCEC has standing to participate as a party in this proceeding. Mr. Tsoikas is not a customer of FPL and the petition does not allege any facts to show that he has a substantial interest that will be affected by the outcome of the proceeding or that his interest is one this need determination is designed to protect. PBEC is not registered with the Secretary of State's Division of Corporations and is not chartered to conduct business as a nonprofit association in Florida. The petition does not allege any facts to show that PBEC's participation as a party meets either prong of the Agrico test or the association standing requirements of Florida Home Builders and Farmworker's. In addition, the petition does not allege any facts that demonstrate that Mr. Tsoikas is qualified to represent it.

Order Denying Intervention, issued June 17, 2008, at p. 2.

A. The Motion for Reconsideration Fails to State Any Factual or Legal Error in the Order Denying Intervention, and Should be Denied.

Assuming that Mr. Tsoikas's June 27, 2008 filing is intended as a motion for reconsideration of the Order Denying Intervention, it fails to address much less satisfy the high legal standard applicable to motions for reconsideration, and should be denied. Mr. Tsoikas's

request does not even mention the June 17, 2008 Order Denying Intervention, quoted above, and does not claim that any point of fact or law was overlooked in rendering the order.

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959); citing State ex.rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974). This standard is equally applicable to reconsideration of a Prehearing Officer's order. See In re: Investigation into pricing of unbundled network elements (Sprint/Verizon track), Order No. PSC-96-0133-FOF-EI, Docket No. 950110-EI (Issued January 29, 1996).

Applying this standard to Mr. Tsolkas's filing, Mr. Tsolkas does not claim that the Commission overlooked a single point of fact or law. Moreover, his filing does not contest that: (i) he failed to allege facts showing standing under applicable law discussed in the Order Denying Intervention; (ii) PBCEC is not a legal entity entitled to bring an action; and (iii) he is not an attorney or authorized representative that could represent PBCEC even if it was a properly constituted entity. In short, the request for reconsideration provides no identification, discussion or explanation of any claimed error whatsoever in the Order Denying Intervention. The request for reconsideration should therefore be denied.

The June 27 request for reconsideration describes Mr. Tsolkas as a “ratepayer of a municipal utility whose rates are impacted by FPL decisions and the regional consumption of fossil fuels which this docket will impact substantially.” While having added new words about “regional consumption of fossil fuels” to the description of the municipal utility serving him, Mr. Tsolkas’s pleading still fails utterly to describe, within the meaning of the case authorities cited in the Order Denying Intervention, either the likelihood of a legally cognizable injury to himself or that the present proceeding is of a nature intended to protect him from such an injury. In addition, even his slim additional “fossil fuel” allegation was not previously provided to the Commission in his June 9, 2008 filing and as such cannot even be properly asserted in a motion for reconsideration. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 162 (Fla. 1st DCA 1981).

II. The Request to Add Alexandria Larson Under “the Coalition Intervenor Status” -- Which Status Does Not Exist -- Should Be Denied.

The June 27 filing adds for the first time the name of another person, Alexandria Larson, who Mr. Tsolkas “requests to add ... as an individual under the Coalition intervenor status on these consolidated dockets.” The request should be rejected.

The Order Denying Intervention correctly denied PBCEC intervention rights in this proceeding for a number of reasons, including that PBCEC is not an entity entitled to participate in legal proceedings as a matter of law. See Order Denying Intervention. Because PBCEC is not a party, Ms. Larson cannot be “add[ed] ... as an individual under the Coalition intervenor status” as requested by Mr. Tsolkas.

To the extent that Mr. Tsolkas's June 27 filing could be construed as a request that Ms. Larson be permitted to intervene in her individual capacity, Ms. Larson's request is not timely and should be denied. Under Rule 25-22.039 of the Commission's rules, Ms. Larson would have had to file a legally sufficient petition to intervene not later than five days in advance of the June 23, 2008, hearing – that is, by June 18. The June 27 filing can not satisfy that requirement, and intervention should be denied.

Finally, FPL notes that Ms. Larson appeared and provided public testimony during the public hearing portion of the proceedings before the Commission on June 23, 2008. Tr. 16-48. FPL acknowledges Ms. Larson's right to disagree with the Company, and observes that the public hearing provided for by the Commission permitted Ms. Larson an opportunity to make her views known, without intervention in the technical hearing.

Conclusion

WHEREFORE, for all of the foregoing reasons, FPL respectfully requests that the Commission deny Mr. Tsolkas's request stated in his June 27 filing and, to the extent the filing could be construed as a petition to intervene by Ms. Larson individually, deny such intervention.

Respectfully submitted this 1st day of July, 2008.

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By: s/Bryan S. Anderson
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished electronically and by United States Mail this 1st day of July 2008, to the following:

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and by United States Mail on the same date to the following:

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By: s/ Bryan S. Anderson
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Authorized House Counsel No. 219511