

**Marguerite McLean**

100077-EI

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**Subject:** Electronic Filing / Docket No. 100077-EI / FPL's Response to Manchester Petition to Intervene  
**Attachments:** Response to Manchester Petition to Intervene FINAL.pdf

**Electronic Filing**

a. Person responsible for this electronic filing:

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b. Docket No. 100077-EI

In Re: Investigation of the appropriateness of the affiliate product offerings to Florida Power & Light customers

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

d. There are a total of 6 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to the Petition to Intervene of the Manchester Group, LLC

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DOCUMENT NUMBER-DATE

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

IN RE: Investigation of the appropriateness )  
of the affiliate product offerings to Florida )  
Power & Light customers. )  
\_\_\_\_\_ )

Docket No: 100077-EI

Filed: July 19, 2010

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE**  
**IN OPPOSITION TO THE PETITION TO INTERVENE OF**  
**THE MANCHESTER GROUP, LLC**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.205, Florida Administrative Code ("F.A.C."), hereby respectfully responds in opposition to the petition to intervene filed by The Manchester Group, LLC ("Manchester") and states:

1. On July 12, 2010, The Manchester Group filed a petition to intervene in the above-styled docket on grounds that "the ultimate determination in this case could have an impact on its business and, more specifically, its opportunities in this market" and because "as a participant in the warranty market, [it] has experience that it believes may be helpful to a full review of the issues presented in this docket."

2. Manchester's petition to intervene should be denied. Manchester's competitive economic interest in securing and preserving "business opportunities" in the "utility line warranty products and services" business is not within the zone of interests this proceeding is designed to protect. Moreover, as indicated in FPL's responses to Staff's First Set of Interrogatories, served April 28, 2010, FPL's affiliate, FPL Energy Services ("FPLES"), has decided to exit the precise lines of business that Manchester wishes to market to FPL's customers. Therefore, Manchester's interest in enhancing its business opportunities through the FPL bill is not appropriate in light of the business decision to discontinue marketing these products to FPL customers.

3. Rule 28-106.205, F.A.C., requires that a petition to intervene in a Commission proceeding contain allegations sufficient to demonstrate that the person seeking intervention is entitled to participate in the proceeding, either as a matter of constitutional or statutory right or pursuant to Commission rule, or because the person's substantial interests are subject to determination or will be affected by the proceeding. Manchester does not assert – and it does not have – any constitutional or statutory intervention rights, or right to intervene pursuant to Commission rule.

4. To demonstrate standing to intervene under the “substantial interest” test, a potential intervener must show that (a) it will suffer injury in fact as a result of the agency action contemplated in the proceeding that is of sufficient immediacy to entitle it to a hearing, and (b) the injury suffered is a type against which the proceeding is designed to protect. *Ameristeel Corp. v. Clark*, 691 So.2d 473, 477 (Fla. 1997) (quoting *Agrico Chemical Co. v. Dep't of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981)). Mere economic losses due to competition are not of sufficient immediacy to warrant intervention. *Florida Soc'y of Ophthalmology v. State Board of Optometry*, 532 So.2d 1279, 1285 (Fla. 1st DCA 1988). Nor do general concerns shared by members of the community at large reflect the type of injury that proceedings are intended to protect. *Boca Raton Mausoleum v. Dep't of Banking and Finance*, 511 So.2d 1060, 1066 (Fla. 1st DCA 1987).

5. As support for its contention that it is entitled to intervene, Manchester asserts that “it appears highly likely that the Commission will make decisions that will affect both the interests of FPL's customers and the interests of Manchester and other potential competitors of FPLES.” (Manchester Petition ¶ 10). Manchester states that it is “concerned that a Commission ruling in this proceeding could eliminate the ability of parties to bill warranty products on the

bill, which would be detrimental to Manchester's business opportunities in this market, as well as to consumers that would like competitive options on warranty products." (Manchester Petition ¶ 11). Manchester's interests are thus not within the zone of interests this proceeding is designed to protect.

6. Manchester is unable to assert the interests of consumers generally as a basis for standing to intervene. Courts strictly limit the ability of a party to assert before a court or agency the interests of third parties who are not before the court or agency. "[The Supreme Court of the United States] has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. ... Without such limitations -- closely related to Article III concerns but essentially matters of judicial self-governance -- the courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights." *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975) (citations omitted); *see also Singleton v. Wulff*, 428 U.S. 106, 113-117 (1976).

7. Moreover, the Commission's jurisdiction with respect to the affiliated businesses of regulated utilities does not involve securing "business opportunities" for the competitors of such affiliates. The Commission does not have jurisdiction to protect the interests of "potential providers of utility line warranty products and services" (Manchester Petition ¶ 12.a.), because those interests are not within the zone of interests that this proceeding is intended to protect. Competition in the utility line warranty products and services business is not a subject of this proceeding, and is in any event beyond the jurisdiction of this Commission. Manchester's interests as a participant in the utility line warranty products and services business do not satisfy

the second prong of the “substantial interest” test stated in *Ameristeel Corp. v. Clark, supra.*, 691 So.2d at 477: they are not of “a type against which the proceeding is designed to protect.”

8. The petition tries to finesse Manchester’s lack of standing by alleging that Manchester has an interest in “non-discriminatory access to FPL’s business services, including billing and collection, which services would also be in the best interests of FPL’s customers and in the public interest generally.” (Manchester Petition ¶ 11). However, once again, Manchester is attempting to assert its economic interests as a basis for its intervention. Further, general concerns such as “the best interests of FPL’s customers” and “the public interest generally”, which are shared by members of the community at large, would not be sufficient grounds for standing even if the subject matter were within the zone of interests to be determined, which it is not. *Boca Raton Mausoleum, supra.*, 511 So.2d at 1066. Legal proceedings are, with narrow exceptions, intended to resolve the personal interests of the parties to those proceedings, not the separate interests of others who are not parties. *Warth v. Seldin, supra.*, 422 U.S. at 500.

9. Beyond Manchester’s failure to adequately allege standing to intervene in this docket, Manchester’s interests in this proceeding are moot. As indicated in FPL’s response to Staff’s First Set of Interrogatories, the responses to which were served on April 28, 2010, FPLES is in the process of exiting the insurance, service and warranty programs and services. In light of the decision of FPL and its affiliate to cease involvement in marketing these products to FPL customers, it would not be appropriate to add a new entity marketing those same types of products to FPL customers at this time.

10. For the foregoing reasons, Manchester should not be permitted to intervene. Manchester’s intervention is unnecessary to protect a legitimate interest that is within this proceeding’s zone of interests.

WHEREFORE, FPL respectfully requests that the Commission deny the Manchester  
Petition to Intervene.

Respectfully submitted,  
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By:           /s/ John T. Butler            
          Fla. Bar No. 283479

**CERTIFICATE OF SERVICE  
DOCKET NO. 100077-EI**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic delivery this 19th day of July, 2010, to the following:

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