

ORIGINAL

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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FLORIDA POWER & LIGHT COMPANY,
Petitioner,

vs.

CASE NO. 99-4264 RX

PUBLIC SERVICE COMMISSION,
Respondent.

FLORIDA POWER CORPORATION'S
PETITION FOR LEAVE TO INTERVENE

FLORIDA POWER CORPORATION (FPC), by its attorneys, pursuant to section 120.56(1)(e), Florida Statutes, and Rule 28-106.205, Florida Administrative Code, hereby petitions the Florida Division of Administrative Hearings for leave to intervene in the above-entitled proceeding, and to be aligned in this proceeding with FLORIDA POWER & LIGHT COMPANY (FPL), for the purpose of general participation in the prehearing and hearing and all subsequent proceedings. As grounds for this request FPC states:

INTRODUCTION

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

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

2. The name, address and telephone number of the petitioner for intervention is:

Florida Power Corporation
P.O. Box 14042
St. Petersburg, Florida 33733
(727) 820-5844

AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
MAS _____
OPC _____
PAI _____
SEC _____
WAW _____
OTH _____

DOCUMENT NUMBER-DATE

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FPC-RECORDS/REPORTING

3. All pleadings, motions, orders and other documents directed to the petitioner for intervention are to be served on:

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**FPC HAS SUBSTANTIAL INTERESTS WHICH WILL BE DETERMINED AND
AFFECTED IN THIS PROCEEDING**

4. Section 120.56(1)(e), Florida Statutes, in pertinent part, states:

[h]earings held under this section shall be conducted in the same manner as provided by ss. 120.569 and 120.57¹, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join in the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings.

§120.56(1)(e), Fla. Stat. (1999)(emphasis supplied.)

5. FPC seeks leave to intervene as a person having a direct and substantial interest in this proceeding and the outcome of this proceeding. FPC's substantial interests will be affected by the instant proceeding because, like FPL, FPC is subject to the rules promulgated by the PSC, including Rule 25-22.036(3). For example, FPC is a public utility and electric utility as defined by section 366.02, Florida Statutes, and has been designated by the PSC as an appropriate party in Florida Public Service Commission (PSC) docket number 981890-EU, entitled: "In re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida." (hereinafter "Reserve Margin docket.") FPC hereby incorporates the arguments made

¹ FPC has sought to satisfy all the requirements for intervention set out in Uniform Rules 28-106.205 and 28-106.201. Section 120.65(1)(e), Florida Statutes, specifically states that the hearing in the instant proceeding will be conducted in the same manner as a section 120.569 and 120.57 proceeding. Therefore, Uniform Rule 28-106.205, pertaining to intervention, would seem to be applicable even though the law implemented by Rule 28-106.205 does

by FPL, in its Petition for Administrative Determination of the Invalidity of Existing Rule, regarding the improper nature of the PSC's use of Rule 25-22.036(3) as a basis to conduct the Reserve Margin docket as an adjudicatory proceeding.

6. If the Division of Administrative Hearings determines that the PSC's Rule 25-22.036(3) violates (or does not violate) the Florida Administrative Procedure Act ("FAPA") and the Uniform Rules of Procedure, FPC's substantial interests will certainly be affected. As a regulated public utility and electric utility, FPC is subject to the regulation of the PSC and participates in many different types of proceedings before the PSC every year. FPC has a substantial interest, as a regulated public utility and electric utility, in ensuring that the PSC initiates adjudicatory proceedings in accordance with the FAPA and the Uniform Rules. If the PSC is able to initiate such proceedings by using Rule 25-22.036(3) and without satisfying the requirements of FAPA and the Uniform Rules, FPC's due process rights, pursuant to the United States Constitution, the Florida Constitution, the Florida Statutes, and the Uniform Rules, will certainly be injured. This is currently the case in the Reserve Margin docket. In addition, FPC's substantial interests in future PSC proceedings will be adversely affected. FPC's potential injuries are of a type and nature that this proceeding is designed to protect against.

NOTICE OF AGENCY DECISION

7. There has been no agency decision in the instant proceeding or the Reserve Margin docket proceeding; therefore, FPC cannot provide a statement of when and how it received notice of the agency decision.

not include section 120.56, Florida Statutes. However, several of the requirements for intervention set out in 28-106.205 and 28-106.201 seem inapplicable to a rule challenge proceeding.

DISPUTED ISSUES OF MATERIAL FACT

8. None. FPC believes the issues raised by FPL's Petition for Administrative Determination of the Invalidity of an Existing Rule are legal questions and do not involve disputed issues of material fact.

ULTIMATE FACTS ALLEGED

9. FPC hereby incorporates the facts alleged by FPL in its Petition for Administrative Determination of the Invalidity of Existing Rule and states that those facts are similarly applicable to FPC. FPC has argued, several times, to the PSC that the Reserve Margin docket was not properly initiated as an adjudicatory proceeding in which the substantial interests of certain parties were to be determined by the PSC. Instead, the PSC initiated the reserve margin docket as a generic investigation pursuant to the PSC's statutory authority. However, the PSC has subsequently sought to conduct the Reserve Margin docket as an adjudicatory proceeding pursuant to section 120.57, Florida Statutes, and cites Rule 25-22.036(3) as its justification. For the reasons more fully described in FPL's Petition for Administrative Determination of the Invalidity of an Existing Rule, Rule 25-22.036(3) is invalid and conflicts with the requirements of FAPA and the Uniform Rules.

SPECIFIC RULES OR STATUTES THE PETITIONER CONTENDS REQUIRE REVERSAL OR MODIFICATION OF THE AGENCY'S PROPOSED ACTION

10. Since this is a rule challenge proceeding, FPC does not specifically challenge any "proposed action" by the PSC. However, FPC does specifically challenge PSC's application of Commission Rule 25-22.036(3), which is invalid, to the Reserve Margin docket, as an illustration of the PSC's improper construction and use of the rule. The statutes and rules that require Commission Rule 25-22.036(3) to be declared invalid include sections 120.52(8),

120.54(5)(a)1., 120.56(1) and (3), and 120.57(5), Florida Statutes; and rule 28-106.101(2), Florida Administrative Code.

RELIEF REQUESTED

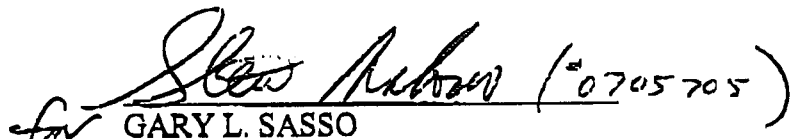
11. FPC requests that the Division of Administrative Hearings assign an Administrative Law Judge to conduct a hearing concerning the issues raised in FPC's Petition and FPL's Petition and that the Administrative Law Judge declare rule 25-22.036(3), Florida Administrative Code, to be an invalid exercise of delegated legislative authority.

WHEREFORE, FPC requests that an appropriate order granting it leave to intervene in accordance with this petition be entered in this proceeding and that thereafter FPC be given notice of all hearings and other proceedings in this matter and the right to appear in those hearings and proceedings and to participate for the purposes and to the extent requested in this Petition.

Respectfully submitted,

FLORIDA POWER CORPORATION

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to all counsel of record listed below this 19th day of October, 1999.


Attorney

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² Ms. Bayó is served as the PSC representative pursuant to rule 28-106.110, Florida Administrative Code.