

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Florida Power & Light)
Company's proposed merger with Entergy) DOCKET NO. 001148-EI
Corporation, the formation of a Florida)
transmission company ("Florida transco"),)
and their effect on FPL's retail rates.)
_____)

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO
THOMAS P. AND GENEVIEVE E. TWOMEY'S PETITION TO INTERVENE**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby respectfully responds to the petition to intervene filed by Thomas P. and Genevieve E. Twomey (the "Twomey petition"), and states:

1. FPL continues to question the appropriateness of permitting parties to intervene in this docket, which is being conducted as an investigation, not as a proceeding to determine a parties' substantial interests. FPL cannot see how the proceedings to date in this investigation docket possibly could lead to the "injury in fact" that intervenors must allege under the test for standing established in *Agrico Chemical Co. v. Dep't of Env. Reg.*, 406 So.2d 478, 481 (Fla. 1st DCA 1981), *rev. denied* 415 So.2d 1359 (Fla. 1982).

2. If the Commission permits Mr. and Mrs. Twomey to intervene at this time, FPL asks that the Commission limit the intervention to areas that are currently the subject of the Commission's investigation. This does not appear to be the case for some of the "disputed issues of fact" and the "ultimate fact" asserted in the Twomey petition:

a. *"The effect of the failed [Entergy] merger [on] FPL's earnings and costs."*

Twomey petition at ¶ 6(a). As stated in the Order Establishing Procedure issued in this docket on

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November 6, 2000, the purpose of this proceeding is to consider the effect of “FPL’s planned merger with Entergy Corporation” on FPL’s retail rates. That merger is no longer being pursued. It would be an unwarranted expansion of this proceeding to explore the impact of *not* merging under the guise considering the impact of merging. Moreover, FPL questions what interest ratepayers such as Mr. and Mrs. Twomey have in “earnings and costs”; presumably, their interest is in the level of FPL’s *rates*.

b. *“The effect of the failed [Entergy] merger on FPL’s market power.”*

Twomey petition at ¶ 6(b). Again, the Order Establishing Procedure contemplated an investigation into the potential consequences of merger, which should not be morphed into an investigation into the consequences of *not* merging. Moreover, nothing in the Order Establishing Procedure contemplates investigating FPL’s “market power.” The Commission has cautioned a previous intervenor, Dynegy Midstream Services, LP, that its intervention was not to be construed as a license to represent its parent’s interests as a competitor of FPL. *See* Order No. PSC-01-0628-PCO-EI, dated March 14, 2001, at 3-4. The Twomeys seem to contemplate a similar detour into the subject of competition and should not be permitted to do so.

c. *“The reasonableness of FPL’s achieved return on equity”* and *“The appropriate level of retail rates to be charged by FPL.”* Twomey petition at ¶¶ 6(d) and 7(a). This is where the Twomey’s petition really departs from the stated purpose of this investigation. Frankly, these issues of fact seem to anticipate expansion of this docket into a full-fledged rate investigation based on the Commission’s actions at last week’s agenda conference. But that has not yet occurred, and neither the Twomeys nor any other current or future party should be effectively delegated authority to determine the scope of the proceeding through their identification of issues.

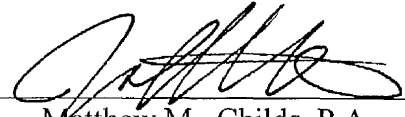
WHEREFORE, FPL respectfully requests that the Commission deny the Twomey petition at this time as premature and, in the alternative, requests that if Mr. and Mrs. Twomey are permitted to intervene, they not be permitted to assert as disputed issues of fact the issues raised in ¶¶ 6(a), 6(b), 6(d) and 7(a) of the Twomey petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FPL's Response in Opposition to Petition to Intervene of Thomas P. and Genevieve E. Twomey was served by facsimile transmission (*) or mailed this 22nd day of May 2001 to the following:

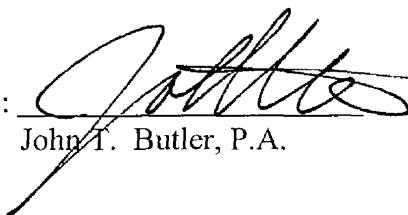
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