

McFARLAIN & CASSEDY, P.A.

Attorneys at Law

ORIGINAL

CHRISTOPHER BARKAS
GINGER L. BARRY
P. DAVID BRANNON
MARSHALL R. CASSEDY, RETIRED
WILLIAM B. GRAHAM
DOUGLAS P. JONES
TERRELL C. MADIGAN
HAROLD R. MARDENBOROUGH, JR.
RICHARD C. McFARLAIN
H. LESTER McFATTER, JR.
ROBERT A. McNEELY
H. DARRELL WHITE, JR.
WILLIAM B. WILEY

305 SOUTH GADSDEN STREET (32301)
POST OFFICE BOX 2174
TALLAHASSEE, FLORIDA 32316-2174

TELEPHONE (850) 222-2107
TELECOPIER (850) 222-8475

FROM THE DESK OF:
WILLIAM B. GRAHAM
e-mail: bgraham@mcfarlain.com

June 12, 2002

RECEIVED-FPSC
02 JUN 12 PM 4: 08
COMMISSION
CLERK

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, FL 32399-0870

Re: Docket No. 020397


Dear Bayo:

On behalf of New Hope Power Partnership and Palm Beach Power Corp., I am enclosing for filing and distribution the original and 15 copies of the following:

- Petition to Intervene of New Hope Power Partnership and Palm Beach Power Corp.

Please acknowledge receipt of the above on the extra copy and return the stamped copy to me. Thank you for your assistance.

Very truly yours,



William B. Graham

AUS _____
 CAF _____
 CMP _____
 COM 5
 CTR WBG/ktc
 ECR Encl.
 GCL cc: Gustavo Cepero, Esq. (w/o encl.)
 OPC _____
 MMS _____
 SEC _____
 OTH [initials]

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE

06122 JUN 12 08

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory Statement
by Florida Power & Light Company

Docket No. 020397

Submitted for Filing:
June 12, 2002

**PETITION TO INTERVENE OF NEW HOPE POWER
PARTNERSHIP AND PALM BEACH POWER CORP.**

Pursuant to Chapter 120, Florida Statutes, sections 403.519 and 366.07, Florida Statutes, ("F.S.") and Rules 25-22.039, 25-22.082, 28-106.201 and 28-106.205, Florida Administrative Code ("F.A.C."), New Hope Power Partnership and Palm Beach Power Corp., ("Petitioners"), by and through their undersigned counsel, file this Petition to Intervene and in support thereof state the following:

1. The name, address and telephone number of the Petitioners is:

New Hope Power Partnership
Palm Beach Power Corp.
1 North Clematis Street, Suite 200
West Palm Beach, Florida 33480
561-655-6303.

The name, address and telephone number of Petitioners' attorneys in this case are:

William B. Graham, Esq.
McFarlain & Cassidy, P.A.
305 S. Gadsden Street
Tallahassee, Florida 32301
850-222-2107

Gustavo Cepero, Esq.
Okeelanta Corporation
Post Office Box 86
South Bay, Florida 33493
561-993-1604

DOCUMENT NUMBER-DATE

06122 JUN 12 8

FPSC-COMMISSION CLERK

Copies of all pleadings, notices and orders in this docket should be provided to Mr. Graham and Mr. Cepero at the above addresses.

2. Florida Power and Light Company ("FPL") is an investor-owned electric public utility subject to Commission regulation pursuant to Chapter 366, F.S. FPL serves retail customers in a service area that encompasses much of southern Florida and Florida's east coast.

3. Petitioners are the owners of two renewable energy (biomass) cogeneration plants located in south Florida. The Okeelanta Cogeneration Plant (Okeelanta) is a 75 MW rated facility located near South Bay, Florida and the Osceola Cogeneration Plant (Osceola) is a 65 MW rated facility located near Pahokee, Florida. The Okeelanta and Osceola plants are qualifying facilities (QFs) as defined in federal and state rules.

4. PETITIONERS' SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS PROCEEDING

To have standing to intervene and participate as a party in this proceeding, Petitioners must demonstrate that their substantial interests will be affected by the decisions rendered herein. In order to do so Petitioners must allege and show that as a result of this proceeding: (1) They will suffer or are in imminent danger of suffering, an injury in fact of sufficient immediacy to entitle them to participate in this proceeding, (2) That their alleged injury falls within the zone of interest this proceeding is designed to protect. *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2nd DCA 1981), *Royal Palm Square Associates v. Servco*, 623 So. 2d 533 (2nd DCA 1993). Petitioners' interests are of the type that this proceeding is designed to protect. Petitioners' substantial interests are subject to the determination being sought here by FPL and will be affected through this proceeding.

A. FPL is seeking to establish a Green Energy Project which would allow its customers to choose to purchase power at prices that exceed standard customer rates based upon the customer's desire to purchase power generated from technologies that afford enhanced protection to the environment. Petitioners are interested in providing renewable energy to FPL for its Green Power Project and, indeed, have responded to FPL's request for proposals for the sale of renewable energy for FPL's Green Power Project.

B. FPL is seeking a "declaratory statement from this Commission that it may pay a Qualified Facility ("QF") FPL's avoided costs, plus a premium borne by customers voluntarily participating in FPL's Green Energy Project, for renewable energy to sell to such customers." FPL does not believe that, pursuant to PURPA, federal regulations implementing PURPA, Florida Statutes and Rules implementing PURPA, and prior Commission decisions, FPL may pay a QF in excess of avoided costs unless such excess costs are borne by customers participating in the Green Energy Project and not by the general body of rate payers.

C. Petitioners support the concept of a Green Energy Project. However, the promotion of renewable energy, as well as Petitioners' interests, could be harmed by an overly narrow interpretation of the law by FPL and this Commission.

D. FPL states in its Petition at paragraph 10 its belief that it may only pay a QF in excess of avoided costs in those circumstances where customers voluntarily choose to pay such additional costs. Petitioners believe that a Florida utility's acquisition of renewable energy is not exclusively governed by PURPA and that the purchase of such energy as part of a program of generation diversity and/or conservation can be reviewed and approved by the Commission under the broad authority to fix retail rates granted to the Commission by 366.041(1), F.S. It should,

therefore, be recognized that an order from this Commission affirming FPL's position will not define - or limit - the scope of this Commission's ability to support the growth of renewable energy in Florida.

Support for the Commission's authority to fix rates and foster the development of renewable energy can be found in several areas. Section 366.81, F.S. is a direct expression of the Commission's authority to encourage renewable energy. The statute addresses the need for efficient energy conservation systems, "...in order to protect the health, prosperity, and general welfare of its state and its citizens." Further that, since solutions to Florida's energy problems are complex, "...the Legislature intends that the use of solar energy, renewable energy sources, highly efficient systems, cogeneration, and load control systems should be encouraged." (emphasis supplied) In addition, the Legislature determined that the Florida Energy and Conservation Act, of which section 366.81 F.S. is a part, is to be "liberally construed." *Legal Environmental Assistance Foundation, Inc. v. Clark*, 668 So. 2d 982, 987, 1996.

This clear Legislative intent is echoed in the Administrative Rules adopted by this Commission. Chapter 25-17, F.A.C., is entitled "Conservation". Rule 25-17.001(5)(d), directs, in pertinent part, that all electric utilities shall, "aggressively integrate (with) . . . small power producers using renewable fuels into the various utility service areas near utility load centers to the extent cost effective and reliable." (emphasis supplied).

In addition to supporting renewable energy sources, it has been the policy of this Commission to encourage cogeneration as well. Cogeneration makes more efficient use of energy resources and lessens the need for public utilities to build additional generating facilities, just as does the use of renewable energy sources. Section 366.82(2), F.S., states that: "The Commission shall

adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration..."

As stated above, the Commission has broad authority to fix retail rates and to evaluate a utility's generation mix as part of that determination. Section 366.041(1), F.S., provides that, when fixing rates, the Commission give consideration, "...to the efficient use of alternative energy resources". In the case of *International Minerals and Chemical Corporation v. Mayo*, 336 So. 2d 548, 552 (1976), the Florida Supreme Court determined that the section 366.05, F.S. and like statutory provisions, evidence a Legislative intent to confer "broader discretion" on the Commission. In that case the petitioners sought to limit the Commission's discretion in setting rates to solely deciding whether costs had been allocated in accordance with accepted accounting principles. The Supreme Court determined that several factors including conservation of energy were all properly considered by the PSC, even though those factors were not specified by statute. The authority of the Commission to consider various criteria in setting fair and reasonable rates is also addressed in *Oxidental Chemical Company v. Mayo*, 351, So. 2d 336 (1977).

E. During the 2002 legislative session, the Florida Legislature, through HB 1601, directed the Florida Public Service Commission, in consultation with the Florida Department of Environmental Protection, to perform a study for the purpose of defining public policy with respect to the use of renewable resources in Florida. The study must be concluded by February 1, 2003 and, at a minimum, will assess the costs, feasibility, and deployment schedules and impacts on the environment of the increased use of renewable energy. The study is also required to describe options and mechanisms to encourage the increased deployment of renewable energy within the State of Florida. Petitioners, as renewable energy producers, are supportive of the increased use of renewables within Florida.

F. Through its study, the Florida Legislature will craft Florida's public policy with

respect to renewable energy. This Commission is authorized to implement the public policy as established by the Legislature. Petitioners will be harmed by any order rendered herein where such an order unduly narrows the scope of the Commission's authority or limits its options in effectuating public policy with respect to the use of renewable resources in Florida and the increased use of such renewables.

G. In its Petition for Declaratory Statement FPL states at paragraph 24 that the requested interpretation would be of benefit to it in that, "it would be able to provide a service of value to its customers and provide an impetus to develop renewable energy." As a renewable energy producer, Petitioners' interests are also at stake herein. The purpose of this proceeding thus coincides with Petitioners' interests, which are to offer and provide cost-effective renewable electrical power.

5. AFFECTED AGENCY

The affected agency is the Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850.

6. DISPUTED ISSUES OF MATERIAL FACT

A. There are no disputed issues of material fact. FPL is seeking a declaratory statement that its interpretation of federal and state law prevents FPL from paying a QF in excess of avoided costs unless such excess costs are borne by customers participating in a voluntary Green Energy Project and not by the general body of rate payers.

7. STATUTES/RULES THAT REQUIRE REVERSAL OF FPL'S PROPOSED INTERPRETATION

A. In the process of fixing rates for electric service, FS 366.041(1) authorizes the Commission to consider, among other things, the value of the service provided to the public and the

efficient use of alternative energy resources. The Commission has broad authority to approve rates and funding mechanisms and is not limited to the funding mechanism proposed by FPL.

B. Section 366.041(1), F.S.

Section 366.05, F.S.

Section 366.81, F.S.

Section 366.82.2, F.S.

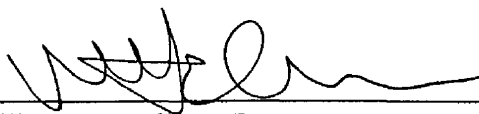
Chapter 25-17, F.A.C.

Rule 25-17.001(5)(d)

8. STATEMENT OF THE RELIEF SOUGHT

As shown above, Petitioners strongly support FPL's Green Energy Project and the development of power generated from technologies that afford enhanced protection to the environment. The concern which motivates Petitioners to seek intervention herein stems from FPL's overly restrictive interpretation of this Commission's authority to implement public policy with respect to the use of renewable resources in Florida. Specifically, Petitioners' participation as an Intervenor is necessary to prevent the entry of an order that would limit renewable energy programs to the narrow instance where all the costs of the renewable energy would be borne solely by customers voluntarily participating in the program.

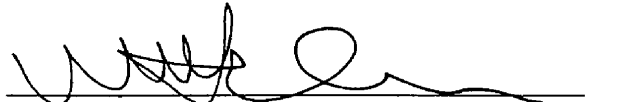
WHEREFORE, Petitioners request the Commission to (1) enter an order allowing them to intervene as a full party in this docket and (2) take any and all other actions necessary to ensure that ratepayer's best interests are served.



William B. Graham, Esq.
Fla. Bar No. 0359068
McFarlain & Cassedy, P.A.
305 S. Gadsden Street
Tallahassee, Florida 32301
850-222-2107
850-222-8475 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: **Jack Shreve, Esquire**, Office of Public Counsel, c/o Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, FL 32399-1400; **R. Wade Litchfield**, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, FL 33408-0420; and **Elizabeth C. Dayton, Esquire, Charles A. Guyton, Esquire**, Steel Hector & Davis LLP, 215 S. Monroe Street, Suite 601, Tallahassee, FL 32301-1804, this 12th day of June, 2002.


William B. Graham, Esq.