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September 27, 2002

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VIA HAND DELIVERY

Blanca S. Bayó, Director
Division of the Commission Clerk &
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
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Re: Docket Nos. 020262-EI and 020263-EI

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are the original and seven (7) copies of FPL's Response to Petitions to Intervene, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 2000, and the word processing software in which the document appears is Word 2000.

If there are any questions regarding this transmittal, please contact me at 222-2300.

Very truly yours,

EC Daley
Elizabeth C. Daley

ECD:gc
Enclosure
Copy to: Counsel for All Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need for an Electrical Power Plant in Martin County by Florida Power & Light Company)))))))	Docket No. 020262-EI
In re: Petition to Determine Need for an Electrical Power Plant in Manatee County by Florida Power & Light Company)))))))	Docket No. 020263-EI Dated: September 27, 2002

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO PETITIONS TO INTERVENE**

Florida Power & Light Company (“FPL”), pursuant to Rule 28-106.204, Florida Administrative Code, requests that this Commission deny the Petition of Thomas P. Twomey and Genevieve E. Twomey To Intervene (“Petition I”), which was filed on September 23, 2002, and the Petition to Intervene of Burton Greenfield, Rita Warren, Walter Feinman, Rena Gold, William Berman, Jan Cooper and Frank and Loralie Strand (“Petition II”), which was filed on September 27, 2002, as transparent last-minute attempts by counsel in Petitions I and II (“the Petitions”) to circumvent a potential adverse ruling on a pending FPL motion seeking removal from this proceeding of the same counsel’s other client, Florida Action Coalition Team (“FACT”)¹, for failure to support its standing allegations and for blatant defiance of the Commission’s discovery rules and orders. Moreover, the two essentially identical Petitions fail to meet basic pleading requirements as to standing. In support of its request, FPL states:

The Commission should not permit its procedures for intervention to be manipulated. However, even if one disregards these troublesome circumstances, each of the two Petitions fails on its face to meet the basic test for standing. In Petitions I and II, all of the petitioners

¹ On September 24, 2002, FPL filed a Motion for Summary Final Order Removing FACT as an Intervenor Party and FPL’s Response to FACT’s Motion to Quash Subpoena. (“FPL’s Motion to Remove FACT”).

(“Petitioners”) seek intervention based on their status as residential customers and ratepayers of FPL and allege that they will be substantially affected by a decision in this proceeding because “the cost of electricity to petitioners in the future will depend upon whether the Commission approves the [FPL] self-build projects sought by FPL in these dockets” Petition I at 2, Petition II at 2 (emphasis added). In order to allege standing, Petitioners must do more than make vague references as to their future electricity costs and neglect to even attempt the allegations required under longstanding Florida law.

The Petitions’ sole reference to Florida standing requirements is the broad statement that “[p]etitioners will be substantially affected by any action the Commission takes in this docket and meets the two-prong test” of Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 478 (Fla. 2d DCA 1981), *rev. denied*, 415 So. 2d 1359 and 1361 (Fla. 1982); AmeriSteel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997). The Petitions do not -- and in fact cannot -- show that the Petitioners meet the Agrico test. Under this longstanding test of standing for parties in administrative proceedings, Petitioners are required to state (1) that the alleged injury be direct and immediate, and not speculative or remote; and (2) that the reasons for participation are within the zone of interest of the statutes governing the proceeding. Petitioners have met neither of these two basic standing requirements.

First, Petitioners actually admit that any alleged injury would be “in the future” (petition at 2), rather than “direct and immediate” as the first prong of the Agrico test expressly requires.

Second, Petitioners allege only that any future injury relates to their “cost of electricity,” which is not within the zone of interest of section 403.519, Florida Statutes, the statute governing this proceeding in which FPL seeks a determination of need for electric power plants. Rather,

the issue of the cost of electricity to utility customers is properly within the zone of interest of sections 366.06 and 366.07, Florida Statutes, concerning rate proceedings.

The present determination of need proceeding is governed by section 403.519, Florida Statutes, which has the express purpose of providing a process to aid the Commission in filing with the Florida Department of Environmental Protection a report as to the need for proposed power plants, as required by section 403.507, Florida Statutes (Florida Electrical Power Plant Siting Act). Section 403.519 addresses the issues of reliability, need and cost-effectiveness of a proposed power plant, but not how the cost of that plant will be treated in setting the rates to be charged to customers. Therefore, Petitioners have failed to meet the second prong of the Agrico test because the Petitions do not allege that the reasons for participation are within the zone of interest of the statutes governing the proceeding.

For these reasons, both of the Petitions should be denied. However, in the event the Commission determines to tentatively allow intervention, Petitioners should be held to strict proof of their standing claims. If Petitioners fail to prove any element of standing under Agrico at trial or at an evidentiary hearing on their standing, they should be excluded from further participation in these proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE
Docket Nos. 020262-EI and 020263-EI

I HEREBY CERTIFY that on this 27th day of September 2002, a copy of Florida Power & Light Company's Response To Petitions To Intervene was served by hand delivery (*) or electronically (**) and U.S. Mail to the following:

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