

**ORIGINAL**

**Timolyn Henry**

**From:** Michael Gross [mgross@earthjustice.org]  
**Sent:** Monday, March 05, 2007 3:35 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Wade\_Litchfield@fpl.com; Natalie\_Smith@fpl.com; Harold Mclean; Charles Beck; rollinsmr@bv.com; shaw.stiller@dca.state.fl.us; mike.halpin@dep.state.fl.us; bill\_walker@fpl.com; Katherine Fleming; Jennifer Brubaker; Lorena Holley  
**Subject:** Sierra Club et al. Petition to Intervene ( Docket No. 070098-EI )  
**Attachments:** Electronic Filing of Petition to Intervene.pdf

Electronic Filing  
<<Electronic Filing of Petition to Intervene.pdf>>

A. Person responsible for this electronic filing

Michael Gross  
111 S. Martin Luther King Jr. Blvd.  
Tallahassee, FL 32301  
850-681-0031  
mgross@earthjustice.org

B. Docket No. 070098-EI

In Re: Florida Power & Light Company's Petition to Determine Need for FPL Glades Power Park Units 1 and 2 Electrical Power Plant

C. Documents are being filed on behalf of The Sierra Club, Inc. (Sierra Club), Save Our Creeks (SOC), Florida Wildlife Federation (FWF), Environmental Confederation of Southwest Florida (ECOSWF), and Ellen Peterson.

D. There are a total of 13 pages in the attached document.

E. The document attached for electronic filing is the Petitioner's Petition to Intervene.

Thank you for your attention and cooperation regarding this request.

CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
RCA \_\_\_\_\_  
SCR \_\_\_\_\_  
SGA \_\_\_\_\_  
SEC \_\_\_\_\_  
OTH Kim P.

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*Because the earth needs a good lawyer*

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3/5/2007

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EARTHJUSTICE

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ENVIRONMENTAL LAW CLINIC AT STANFORD UNIVERSITY

March 2, 2007

Blanca Bayo  
Director, Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

**RE: Docket No. 070098-EI, Florida Power & Light Company's Petition to Determine Need for FPL Glades Power Park Units 1 and 2 Electrical Power Plant**

Dear Ms. Bayo,

Please find enclosed The Sierra Club, Inc. (Sierra Club), Save Our Creeks (SOC), Florida Wildlife Federation (FWF), Environmental Confederation of Southwest Florida (ECOSWF), and Ellen Peterson's Petition to Intervene in the above referenced proceeding, consisting of 12 pages. I thank you for your attention to this matter.

Sincerely,

/s/ Michael Gross

Michael Gross  
Earthjustice  
111 S. Martin Luther King Jr. Blvd.  
Tallahassee, FL 32301  
(850) 681-0031

CC: All Official and Interested Parties

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's  
Petition to Determine Need for FPL Glades  
Power Park Units 1 and 2 Electrical Power  
Plant

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DOCKET NO.: 070098-EI

Filed March 5, 2007

PETITION TO INTERVENE

Petitioners, The Sierra Club, Inc. (Sierra Club), Save Our Creeks (SOC), Florida Wildlife Federation (FWF), Environmental Confederation of Southwest Florida (ECOSWF), and Ellen Peterson, pursuant to Rule 25-22.039, Florida Administrative Code, hereby file their petition to intervene in this docket and state:

**I. AGENCY AFFECTED**

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

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

**II. IDENTIFICATION OF THE INTERVENORS AND THEIR COUNSEL**

2. The Sierra Club is a nonprofit corporation with its principal place of business at 85 Second Street, 2<sup>nd</sup> Floor, San Francisco, CA 94105.
3. Ellen Peterson is a member of the Sierra Club and is a property owner of land on Second Street in Palmdale in Glades County. Her address is 8791 Corkscrew Road, Estero, Florida 33928.
4. FWF is a Florida not-for-profit corporation with its principal place of business at 2545 Blairstone Pines Drive, Tallahassee, Florida 32314.

5. SOC is a Florida not-for-profit corporation with its principal place of business at 8791 Lockscrow Road, Estero, Florida 33928.

6. ECOSWF is a Florida not-for-profit corporation with its principal place of business at 421 Verna Road, Sarasota, Florida 34240.

7. The name and address of the person authorized to receive all notices, pleadings, and other communications in this docket is:

Michael A. Gross  
Fla. Bar No. 0199461  
Earthjustice  
P.O.Box 1329  
Tallahassee, FL 32302  
850-681-0031 (tel)  
850-681-0020(fax)  
[mgross@earthjustice.org](mailto:mgross@earthjustice.org)

### **III. RECEIPT OF NOTICE OF AGENCY'S PROPOSED ACTION**

8. Petitioners received notice of the Florida Public Service Commission's (Commission) action through its NOTICE OF COMMENCEMENT OF PROCEEDING FOR DETERMINATION OF NEED FOR A PROPOSED ELECTRICAL POWER PLANT posted on the Commission's website on February 7, 2007.

### **IV. THE INTERVENORS' SUBSTANTIAL INTERESTS**

9. The Sierra Club consists of members living throughout the state, and around the nation. There are substantial numbers of Sierra Club members who are residents of Florida living in FPL's service area, and as customers receiving electricity service from Florida Power & Light Company (FPL) will be substantially affected by the outcome of this proceeding. The Sierra Club is a nonprofit corporation with approximately 700,000 members in chapters and groups in all 50 states, including approximately 30,042 members in Florida. The Sierra Club

represents the interests of its members in state and federal litigation, public policy advocacy, administrative proceedings, and before state, local, and federal lawmakers. The Sierra Club is very involved in advocacy regarding issues related to responsible energy policy, including adoption, implementation, and enforcement of meaningful requirements to evaluate the appropriateness of new electricity capacity (especially new capacity that would use dirty fuels such as coal to generate electricity). Sierra Club's experts have provided testimony in numerous instances before state public utility commissions on issues such as consideration of costs associated with carbon regulation and the importance of thoroughly evaluating efficiency, conservation, and other demand-side options. Indeed, Sierra Club was granted intervention by the Commission in *In re: Petition for determination of need for Electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee*, Docket No. 060635 EU. All of these activities support Sierra Club's mission to explore, enjoy, and protect the wild places of the earth and educate and enlist humanity to protect and restore the quality of the natural and human environment. The number of Sierra Club members in each county in the FPL service area (excluding counties only partially serviced by FPL) are as follows: Columbia 50, Baker 9, Union 4, Bradford 15, Nassau 183, Clay 202, St. John's 551, Putnam 113, Flagler 185, Volusia 1131, Brevard 1244, Indian river 333, Okeechobee 23, St. Lucie 307, Martin 418, Palm Beach 2963, Broward 2644, Miami-Dade 2879, Collier 695, Hendry 21, Glades 15, Lee 1085, Charlotte 405, Desoto 23, Sarasota 1967, and Manatee 908.

10. Ellen Peterson, whose address is 8791 Corkscrew Road, Estero, Florida 33928, is a member of the Sierra Club and a customer of FPL receiving electricity service from FPL, and owns land located in Palmdale, Florida in Glades County. This property is on Second Street,

Palmdale, and it is recorded as parcel number S34-40-30-002-0146-0010 in the property records of Glades County. Her property is less than a half a mile from the rail line that would have a daily one and a quarter mile long coal train running to the proposed power plant.

11. FWF has approximately 14,000 members residing throughout the state of Florida. One of FWF's major priorities is promote the development of a sustainable energy policy in the State of Florida and to persuade the Commission to establish guidelines for implementation of energy efficiency upgrades and incentives to energy users in order to promote energy conservation and alternative energy source development, as well as to promote the preservation, management, and improvement of Florida's fish and wildlife. There are substantial numbers of FWF members who are residents of Florida living in FPL's service area, and as customers receiving electricity from FPL will be substantially affected by the outcome of this proceeding. FWF has a particular focus on Lake Okeechobee and its tributaries, including Fisheating Creek. That stream is within three miles downwind of the site of the very large coal-fired power plant proposed by Florida Power and Light. FWF has participated and continues to participate on behalf of its members in legal and administrative challenges to defend and otherwise support rules that protect Lake Okeechobee.

12. ECOSWF has approximately 100 members consisting of business entities, governmental agencies and other organizations and individuals living in Southwest Florida. ECOSWF was organized for the purpose of conserving the natural resources of Southwest Florida and to promote the development of a sustainable energy policy in Florida, implement energy efficiency improvements and alternatives, and to engage in actions in the furtherance of energy conservation and alternative energy source development. A substantial number of

ECOSWF's members live in FPL's service area and are customers receiving electricity service from FPL and will be substantially affected by the outcome of this proceeding.

13. SOC has approximately 100 members who reside primarily in South Florida. SOC was organized to preserve Fisheating Creek and other South Florida water bodies for the use and enjoyment of the public and for their natural resource value. There are substantial numbers of SOC members who are residents of Florida living in FPL's service area and as customers receiving electricity service from FPL will be substantially affected by the outcome of this proceeding.

14. The Commission will decide in this docket whether it should certify the need for FPL's proposal for two solid fuel coal-fired generating units, each having summer net capacities of approximately 980 MW for a combined net capacity of 1,960 MW. The plants are proposed to be located on a 4,900 acre site on property located west of Lake Okeechobee, approximately four miles northeast of the town of Moore Haven in an unincorporated area of Glades County. In making its determination, the Commission must take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, whether the proposed plant expansions are the most cost-effective alternative available, whether the power generated by the proposed plants can be produced with the least risk of all alternatives, and the Commission must expressly consider the conservation measures taken by or reasonably available to FPL which might mitigate the need for the proposed plants, and may consider other matters within its jurisdiction which it deems relevant.

## **V. STATEMENT OF AFFECTED INTERESTS**

15. All Intervenors have interests that are of the type this proceeding is designed to protect. *Ameristeel Corp. v. Clark*, 691 So.2d 473 (Fla. 1997); *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), reh. denied, 415 So.2d 1359 (Fla. 1982); *Florida Home Builders Ass'n v. Dep't of Labor and Employment Security*, 412 So.2d 351, 353-54 (Fla. 1982). As consumers, Intervenors' members bear a significant risk associated with the Commission's decision in this case, in particular, related to energy price volatility resulting from regulatory decisions that are made based on incorrect and/or inadequate factual information reflecting a narrow and short-sighted energy strategy. Additionally, Intervenors' members will be directly affected by the cost impacts of future carbon regulation (which at this point is a virtual certainty), the inappropriate reliance on new capacity instead of less expensive and readily available improvements in efficiency and other demand-side alternatives, and the health and environmental consequences of energy decisions that disproportionately rely on dirty sources of energy such as coal. Intervenors believe that before taking any action on the proposed FPL plants, FPL should be required to meaningfully evaluate alternatives such as energy efficiency, renewable energy, demand-side management and conservation – strategies that are grossly underutilized in Florida's energy portfolio – and that the Commission and the interested public should have the opportunity to examine and provide testimony on FPL's evaluation of these strategies. Failure to require a vigorous assessment of such strategies will result in unnecessary premiums for fossil fuel generation for Florida's ratepayers, including Intervenors' members, and will subject Intervenors' members and other Floridians to the harmful effects of increased pollution (including toxics like mercury, and criteria pollutants like smog, SO<sub>2</sub>, volatile organic compounds, and soot). While the availability of an adequate, affordable, and reliable supply of electricity is vitally important, an irresponsibly



one-sided strategy for accomplishing this goal is not in the best interest of Florida's electricity consumers.

## **VI. DISPUTED ISSUES OF FACT**

16. Whether FPL has demonstrated the need for its proposed new 1,960 MW pulverized coal and petroleum coke electric generating plants to be located in Glades County under Section 403.519, Florida Statutes.

17. Whether FPL has adequately demonstrated a need for additional generating capacity in the area that will be served by the proposed plant.

18. Whether FPL has adequately demonstrated that the proposed plants are the most cost-effective and lowest risk alternative to provide needed capacity in the area that will be served by the proposed plants.

19. Whether FPL erroneously concluded in its filing that there are no additional reasonably available conservation or DSM measures, which would mitigate the need for the proposed plant.

20. Whether conservation and DSM measures have been adequately valued and examined in connection with assessing the need for and appropriateness of new 1,960 MW pulverized coal and petroleum coke generating plants to be located in Glades County. In light of all costs and risks associated with construction of pulverized coal plants (including costs related to complying with future CO<sub>2</sub> regulations), efficiency, conservation and other DSM measures are likely to offer significant comparative benefits that will mitigate the need for the plants.

21. Whether the regulation of CO<sub>2</sub> is sufficiently likely to warrant formal consideration in the needs determination for the FPL plants.

22. Whether FPL's assessment of the proposed plants as the most cost-effective alternative adequately and appropriately accounts for the cost of complying with future CO2 regulation.

23. Whether the failure to consider CO2 in connection with the needs determination for the FPL plants is a material breach of FPL's regulatory obligations and of the obligation of the Commission to protect the interests of Florida's electricity consumers.

24. Whether FPL adequately and appropriately considered alternative new capacity options such as renewable energy sources, natural gas, and IGCC.

25. Whether the proposed plants are consistent with general principles of good integrated planning and portfolio management.

26. Whether FPL's proposed plants are the best resource choice for FPL in the contexts of fuel diversity and environmental compliance.

27. Whether FPL's environmental compliance scenarios adequately capture the possible range of compliance costs.

## **VI. STATEMENT OF ULTIMATE FACTS ALLEGED**

28. FPL must meet the requirements of Rules 25-22.080 and 25-22.081, Florida Administrative Code. Before certifying the need for the FPL plants as proposed, the Commission must ensure that the proposed plants are needed, and that it is the most appropriate alternative considering all available options.

29. The analysis proposed by FPL does not fully evaluate important alternatives, including an IGCC plant, DSM and other conservation measures, does not adequately assess costs that will affect the plants over the life of the plants, and does not analyze important risks,

including CO2 and other environmental costs associated with the operation of a new coal-fired power plant.

30. Each of these elements is necessary to protect the interests of affected consumers as required by Florida law.

31. The Commission must closely scrutinize the FPL proposal, including cost projections, evaluation of alternatives, evaluation of risks (including consideration of carbon-related costs), and the conclusion that new capacity totaling 1,960 MW is needed in the area to be served by the proposed plants.

32. The Commission must require additional analysis where any of these evaluations are found lacking, and should decline to certify the need for the proposed facility unless FPL can affirmatively demonstrate that the proposed plants are the best available alternative.

## **VII. STATUTES AND RULES THAT REQUIRE THE RELIEF REQUESTED**

33. The statutes and rules that require the relief requested by Intervenors include, but are not limited to, Chapter 120, sections 403.519 and 366.80 – 366.85 Florida Statutes, and Rules 25-22.039, 25-22.080, and 25-22.081, Florida Administrative Code.

## **VIII. STATEMENT EXPLAINING HOW THE ALLEGED FACTS RELATE TO THE SPECIFIC RULES OR STATUTES CITED ABOVE**

34. Rule 25-22.039, Florida Administrative Code, provides that persons whose substantial interests are subject to determination in, or may be affected through an agency proceeding are entitled to intervene in such proceeding. The Florida Energy Efficiency and Conservation Act, sections 366.80 – 366.85 and 403.519, Florida Statutes, provides the Commission with jurisdiction over the need determinations for any provider of electric energy in the State and directs the Commission to ensure that new generating facilities are needed and, if needed, reflect the most cost-effective, least costly, and least risky alternative. A substantial

number of Intervenor's members live in FPL's service area and are residential electricity customers of FPL, and accordingly, their substantial interests are subject to determination in, and will be affected by, the Commission's decision whether to certify the need for the proposed plants. It necessarily follows that the Intervenor's are entitled to intervene in this docket.

35. Section 403.519 (3), Florida Statutes, provides the guidelines which the Commission must take into account in making its need determination. In making its determination, the Commission must take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, whether the proposed plant expansions are the most cost-effective alternative available, whether the power generated by the proposed plants can be produced with the least risk of all alternatives, and the Commission must expressly consider the conservation measures taken by or reasonably available to FPL which might mitigate the need for the proposed plants, and may consider other matters within its jurisdiction which it deems relevant.

The Commission's determinations on any or all of these criteria will have a substantial impact on the Intervenor's. Failure of the Commission to make these determinations appropriately will cause the Intervenor's to suffer an immediate and / or imminent injury in fact in terms of the reliability or cost-effectiveness of their electric service.. Intervenor's substantial injury is of a type or nature which this proceeding is designed to protect as clearly set forth in Section 403.519 (3), Florida Statutes.

36. The Intervenor's interest is of a type or nature which this proceeding is designed to protect.

37. The subject matter of this docket is within the Intervenor organizations' general scope of interest and activity, and the relief requested is the type of relief appropriate for the Intervenor organizations to receive on behalf of their members.

38. The rights and interests of Intervenors' members cannot adequately be represented by any other party in this docket, and intervention will not unduly delay or prejudice the rights of other parties.

39. Intervenors' representation of their members in this docket will advance administrative efficiency by consolidating the participation of multiple Intervenor members.

#### **IX. RELIEF SOUGHT**

40. For the reasons set forth above, the Intervenors request that the Commission enter an order granting them leave to intervene in this docket.

Respectfully submitted this 5<sup>nd</sup> day of March, 2007.

/s/ Michael Gross

Michael Gross  
Earthjustice  
111 S. Martin Luther King Jr. Blvd.  
Tallahassee, FL 32301  
(850) 681-0031  
FL Bar ID. 0199461  
Attorney for Petitioners

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 5<sup>th</sup> day of March, 2007, via electronic mail and US Mail on:

Florida Power & Light Company  
R. Wade Lichtfield  
Natalie F. Smith  
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\_\_\_\_\_  
/s/ Michael Gross

Attorney