BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's	)	Docket No. 070098-EI
Petition to Determine Need for FPL Glades	)	
Power Park Units 1 and 2 Electrical Power Plant	)	Dated: March 9, 2007

FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO PETITION TO INTERVENE

NOW, BEFORE THIS COMMISSION, through undersigned counsel, comes Florida Power & Light Company ("FPL" or the "Company"), and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response to the Petition to Intervene ("Petition to Intervene") filed March 5, 2007 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 (collectively the "Intervenors"), and in support states:

1. FPL does not object to the Intervenors' participation as a party in Docket No. 070098-EI. However, the Commission should expressly limit Intervenors' participation in this docket to litigation of issues that are PSC jurisdictional, recognizing that other state agencies have jurisdiction over environmental, land use and other aspects of reviewing and approving the project.

2. As the Intervenors are aware, under the Florida Electrical Power Plant Siting Act, the Commission is just one agency that has jurisdiction over certain aspects of the siting of an electrical power plant in Florida. *See* Sections 403.501 – 403.519, Florida Statutes (2006). Specifically, under Section 403.519(1), the Legislature directs the Commission to "determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act." Other state and local agencies and governmental bodies vested with jurisdiction over other

aspects of siting the FGPP electrical power plant include the Florida Department of Environmental Protection ("FDEP"), the Florida Department of Community Affairs, the South Florida Water Management District, the Florida Department of Transportation ("FDOT"), and Glades County. *See* Section 403.507, Florida Statutes (2006). The Commission's determination of need in accordance with Section 403.519 is a condition precedent to issuance of FDEP's project analysis and conduct of the plant site certification hearing. *See id.* Section 403.507(4).

3. This need determination proceeding is not the appropriate context in which to hear non-jurisdictional issues, especially where such issues are appropriately subject to debate in the context of the land use and certification proceedings. The Intervenors, with the exception of Sierra Club, are each parties to the land use and certification proceedings pending at the Florida Division of Administrative Hearings, and they are able to raise non-PSC jurisdictional issues within the context of those proceedings. *See* DOAH Case No. 06-005334EPP, OCG Case No. 06-2649.

4. In particular, with respect to the intervention of customer Ellen Peterson, who is also a party to the land use and certification proceedings, the Petition to Intervene states that Ms. Peterson is a customer of FPL who owns property "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." Petition to Intervene, ¶ 10. Ms. Peterson's interests as a landowner are not within the zone of interests this proceeding is designed to address. Therefore, in ruling on the Petition to Intervene, the Commission should expressly limit Ms. Peterson's intervention in this PSC proceeding to her substantial interests as a customer of FPL. *See Agrico Chemical Co. v. Dep't of Envtl. Reg.*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). Land use and related issues associated with rail traffic to

the FGPP plant site, if appropriately raised, would be addressed by FDOT and any other agencies with subject matter jurisdiction.

5. Further, FPL, notes that several of the "Disputed Issues of Fact" raised by Intervenors in the Petition to Intervene are vague, redundant, and misstatements of the criteria for the Commission's consideration as enumerated in Section 403.519, Florida Statutes (2006). For example, contrary to the Intervenors assertion, whether the FGPP electrical power plant is the "lowest risk alternative to provide capacity needed in the area that will be served by the proposed plants" is not the appropriate issue for the Commission's consideration. Petition to Intervene ¶ 18. Rather, in determining the need for the plant, the Legislature directs the Commission to "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, and whether the proposed plant is the most cost-effective alternative available." *See* Section 403.519(3), Florida Statutes (2006). Also, the question of whether DSM measures are "adequately valued" has already been decided by the Commission and should not be revisited in the context of a particular utility's need determination proceeding. Petition to Intervene ¶ 20. Rather, in the context of a need determination, the Commission is directed to "expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant." *See* Section 403.519(3), Florida Statutes (2006). FPL will submit its proposed preliminary issues list to the Commission on March 12, 2007.

6. Intervenors take the case as they find it. *See* Rule 25-22.039, Florida Administrative Code (2006).

WHEREFORE, for the above and foregoing reasons, Florida Power & Light Company responds to the Petition to Intervene filed on behalf of the Sierra Club, Inc., Save Our Creeks, Florida Wildlife Federation, Environmental Confederation of Southwest Florida, and Ellen Peterson and requests that their intervention be subject to the conditions set forth above and such other conditions as the Commission may deem appropriate.

Respectfully submitted this 9th day of March, 2007.

R. Wade Litchfield
Associate General Counsel
Bryan S. Anderson
Natalie F. Smith
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: (561) 691-7207
Facsimile: (561) 691-7135

By: s/Natalie F. Smith
Natalie F. Smith
Florida Bar No. 470200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Response to Petition to Intervene has been furnished electronically and by United States Mail this 9th day of March, 2007, to the following:

Katherine E. Fleming, Esquire
Jennifer Brubaker, Esquire
Lorena Holley, Esquire
Florida Public Service Commission
Division of Legal Services
Gerald L. Gunther Building
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Michael Gross, Esquire **
Attorney for The Sierra Club, Inc., et al
c/o The Florida Legislature
111 S. Martin Luther King Jr. Blvd.
Tallahassee, FL 32301

Office of Public Counsel
Charles J. Beck, Esquire
Deputy Public Counsel
c/o The Florida Legislature
111 W. Madison St., Room 812
Tallahassee, FL 32399-1400

Office of Public Counsel
c/o Harold McLean
111 W. Madison St., #812
Tallahassee, FL 32399-1400

Black & Veatch *
Myron Rollins
11401 Lamar Avenue
Overland Park, KS 66211

Department of Community Affairs *
Valerie Hubbard, Director
Division of Community Planning
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Department of Environmental Protection *
Michael P. Halpin
Siting Coordination Office
2600 Blairstone Road MS 48
Tallahassee, FL 32301

By: __s/Natalie F. Smith_____
Natalie F. Smith
Fla. Bar No.: 0470200

[1] Electronic version only, all others sent via U.S. Mail.
* Indicates interested party
** Indicates not an official party of record as of the date of this filing.