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Sent: Thursday, April 05, 2007 3:54 PM
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Subject: 070098-EI: Petition to Intervene
Attachments: NRDC Petition to Intervene.pdf

ORIGINAL

<<NRDC Petition to Intervene.pdf>>

Electronic Filing

A. Person responsible for this electronic filing

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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), Natural Resources Defense Council (NRDC), and Ellen Peterson.

D. There are a total of 8 pages in the attached document.

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

Thank you for your attention and cooperation regarding this request.

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--Because the Earth Needs a Good Lawyer--

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DOCUMENT NUMBER-DATE

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4/5/2007

FPSC-COMMISSION CLERK

ORIGINAL

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

DOCKET NO. 070098-EI

Filed April 5, 2007

PETITION TO INTERVENE

Petitioner, Natural Resources Defense Council ("NRDC"), hereby files its petition to
intervene in this docket, and states:

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 NRDC is a national non-profit organization, incorporated under the law of New York, with its principle place of business at:
Natural Resources Defense Council, Inc.
40 West 20th Street
New York, NY 10011-4231
3. 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)
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III. RECEIPT OF NOTICE OF AGENCY'S PROPOSED ACTION

4. Petitioner 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

5. NRDC is a national non-profit organization with more than 500,000 members across the United States and almost 30,000 members in the state of Florida. NRDC is dedicated to the protection of the environment, human health, and natural resources. NRDC 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 polluting fuels such as coal to generate electricity). NRDC'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.
6. There are thousands of NRDC members living in the service areas that will be affected by this FPSC proceeding – specifically, in areas serviced by Florida Power and Light ("FPL"). Indeed, more than fourteen thousand NRDC members are Florida residents who live in the service-areas that will be affected by the Florida Public Services Commission's decision in this case. In particular, NRDC members live in the following locations in the following numbers:

Counts by county:

Baker	12
Bradford	12
Brevard	1385
Broward	3423
Charlotte	472
Clay	167
Collier	757
De Soto	28
Flagler	250
Glades	3
Indian River	442
Lee	1231
Manatee	865
Martin	497
Miami-Dade	2597
Nassau	114
Okeechobee	2

Palm Beach	238
Saint Johns	64
Saint Lucie	61
Sarasota	725
Union	4
<u>Volusia</u>	<u>1296</u>
 TOTAL	 14,645¹

- The Commission will decide in this docket whether it should certify the need for FPL's proposal for two solid fuel pulverized coal-fired steam generating units, each having summer net capacities of approximately 980 MW for a combined net capacity of 1,960 MW. FPL proposes to locate the new facility on a 4,900 acre site 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

- NRDC is intervening in this proceeding on its own behalf and on behalf of its members. Petitioner's interests are of the type that this proceeding is designed to protect. See *Ameristeel Corp. v. Clark*, 691 So. 2d 473 (Fla. 1997); *Amico 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, NRDC members bear significant risk associated with the Commission's decision in this case. These risks include 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. In particular, NRDC members will be directly affected by, among other things, the cost impacts of future carbon regulation, the inappropriate reliance on new capacity instead of less expensive and readily available improvements in efficiency and other demand-side alternatives, the use of antiquated and inappropriate combustion technology, an inadequate consideration of available renewable energy technologies, and the health and environmental consequences of energy decisions that disproportionately rely on dirty sources of energy such as coal. Indeed, NRDC was recently granted intervention by the Commission in *In re: Petition for determination of*

¹ This list is based on membership data only for the counties listed, and may not be an exhaustive list of every NRDC member in relevant service areas.

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.

9. Intervenor believes 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 a robust 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 Intervenor’s members, and will subject Intervenor’s members and other Floridians to the harmful effects of increased pollution (including toxics like mercury, and criteria pollutants like smog, SO₂, 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

10. 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.
11. Whether FPL has adequately demonstrated a need for additional generating capacity in the area that will be served by the proposed plant.
12. 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.
13. 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.
14. 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 CO₂ regulations), efficiency, conservation and other DSM measures are likely to offer significant comparative benefits that will mitigate the need for the plants.
15. Whether the regulation of CO₂ is sufficiently likely to warrant formal consideration in the needs determination for the FPL plants.

16. 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.
17. 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.
18. Whether FPL adequately and appropriately considered alternative new capacity options such as renewable energy sources, natural gas, and IGCC.
19. Whether the proposed plants are consistent with general principles of good integrated planning and portfolio management.
20. Whether FPL's proposed plants are the best resource choice for FPL in the contexts of fuel diversity and environmental compliance.
21. Whether FPL's environmental compliance scenarios adequately capture the possible range of compliance costs.

VII. STATEMENT OF ULTIMATE FACTS ALLEGED

22. 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.
23. 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.
24. Each of these elements is necessary to protect the interests of affected consumers as required by Florida law.
25. 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.
26. 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.

VIII. STATUTES AND RULES THAT REQUIRE THE RELIEF REQUESTED

27. The statutes and rules that require the relief requested by the Intervenor 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.

IX. STATEMENT EXPLAINING HOW THE ALLEGED FACTS RELATE TO THE SPECIFIC RULES OR STATUTES CITED ABOVE

28. 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 is entitled to intervene in this docket.
29. 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.
30. The Commission's determinations on any or all of these criteria will have a substantial impact on the Intervenor and its members. Failure of the Commission to make these determinations appropriately will cause the Intervenor and its members 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.
31. The Intervenor's interest is of a type or nature which this proceeding is designed to protect.

32. The subject matter of this docket is within the Intervenor organization's general scope of interest and activity, and the relief requested is the type of relief appropriate for the Intervenor organization to receive on behalf of their members.
33. Intervenor's representation of its members in this docket will advance administrative efficiency by consolidating the participation of multiple Intervenor members.

X. RELIEF SOUGHT

34. For the reasons set forth above, the Intervenor requests that the Commission enter an order granting them leave to intervene in this docket.

Respectfully submitted this 5th day of April, 2007.

/s/ Michael Gross

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