

**Ruth Nettles**

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**Sent:** Monday, July 23, 2007 4:28 PM  
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**Subject:** Electronic Filing for Motion for More Definite Statement of Investor-Owned Utilities  
**Attachments:** IOU Motion.pdf

<<IOU Motion.pdf>>

Electronic Filing

**ORIGINAL**

a. Person responsible for this electronic filing:

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b. Docket No. 070232-EQ – Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities or small qualifying facilities and approval of tariff schedule REF-1, by Gulf Power Company.

Docket No. 070234-EQ – Petition for approval of renewable energy tariff standard offer contract, by Florida Power & Light Company.

Docket No. 070235-EQ – Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100kw tariff, by Progress Energy Florida, Inc.

Docket No. 070236-EQ – Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

c. Document being filed on behalf of Gulf Power Company, Tampa Electric Company, Progress Energy Florida, and Florida Power & Light Company.

d. There are a total of 6 pages.

e. The document attached for electronic filing is the Motion for More Definite Statement, or in the Alternative, Motion to Dismiss Florida Industrial Cogeneration Association's Petition for Formal Hearing and for Leave to Intervene.

(See attached file: IOU Motion)

Thank you for your assistance in this matter.

DOCUMENT NUMBER-DATE

06281 JUL 23 5

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7/23/2007

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities or small qualifying facilities and approval of tariff schedule REF-1, by Gulf Power Company.

DOCKET NO. 070232-EQ

In re: Petition for approval of renewable energy tariff standard offer contract, by Florida Power & Light Company.

DOCKET NO. 070234-EQ

In re: Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100kw tariff, by Progress Energy Florida, Inc.

DOCKET NO. 070235-EQ

In re: Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

DOCKET NO. 070236-EQ

Filed July 23, 2007

**MOTION FOR MORE DEFINITE STATEMENT, OR IN THE ALTERNATIVE,  
MOTION TO DISMISS FLORIDA INDUSTRIAL COGENERATION ASSOCIATION'S  
PETITION FOR FORMAL HEARING AND FOR LEAVE TO INTERVENE**

Pursuant to rule 28-106.204, Florida Administrative Code, Petitioners Gulf Power Company, Florida Power & Light Company, Progress Energy Florida, Inc., and Tampa Electric Company (collectively the "IOUs") file this Motion for More Definite Statement or, in the Alternative, Motion to Dismiss Florida Industrial Cogeneration Association's Petition for Formal Hearing and for Leave to Intervene and state:

1. On July 2, 2007, the Florida Industrial Cogeneration Association ("FICA") filed a Petition for Formal Hearing and for Leave to Intervene in the above-styled dockets.

2. The IOUs appreciate the interest of FICA members in these dockets and recognize the important role renewable generators play in meeting Florida's energy needs. However, the

DOCUMENT NUMBER-DATE

06281 JUL 23 5

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petition filed by FICA is not specific as to which actions of the Public Service Commission (“PSC” or “Commission”) in approving the standard offer contracts and associated tariffs that FICA finds objectionable. Clarification of the petition is thus needed in order to provide the IOUs with a fair opportunity to respond to the issues raised by FICA.

3. The four-page FICA petition purportedly was filed pursuant to rule 28-106.201, Florida Administrative Code, which lists the mandatory elements of all petitions that initiate proceedings determining substantial interests. However, the petition does not comply with the rule because it fails to state the “ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency’s proposed action.” R. 28-106.201(2)(e), Fla. Admin. Code (emphasis supplied); *see also* § 120.54(5)(b)4.e., Fla. Stat. (directing that the Uniform Rules of Procedure require that petitions include “[a] statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency’s proposed action.”) (emphasis supplied).

4. In its Statement of Ultimate Facts, the FICA petition lists the following:

(i) that matters within the scope of this proceeding will affect the cost, availability, reliability and security of electricity supplies;

(ii) that matters within the scope of this proceeding will determine to what extent renewable energy resources will be promoted;

(iii) that the renewable energy contracts (and/or tariffs) which are the subject of these proceedings are not specifically designed to promote renewable energy resources and fail to appropriately promote such resources;

(iv) that the renewable energy contracts (and/or tariffs) which are the subject of these proceedings do not comply with the requirements, intent and policies articulated by the Florida Legislature.

Petition, ¶ 10, p. 4.

5. These “Ultimate Facts” simply express FICA’s general dissatisfaction with the standard offer contracts. Nowhere does FICA identify the “specific facts” that it contends “warrant reversal or modification of the agency’s proposed action.” R. 28-106.201(2)(e).

6. The remainder of FICA's petition is equally vague and general. The identified "disputed issues of material fact" are as follows:

(i) Whether the renewable energy contracts (and/or tariffs) which are the subject of these proceedings will appropriately promote the development of renewable energy resources in the State as required by Florida law.

(ii) Whether the payments, contract terms and conditions established by, and the policies reflected in, said renewable energy contracts (and/or tariffs) are specifically designed to promote renewable energy resources in the State as required by Florida law.

(iii) The payments, calculations, terms and conditions established by said renewable energy contracts (and/or tariffs) raise additional disputed issues of material fact that can only be resolved by a formal hearing.

Petition, ¶ 8, p. 3.

7. Given that FICA is complaining about four separate standard offer contracts, each of which is different, such general and vague statements do nothing to put the IOUs on notice as to what portions of the contracts FICA finds objectionable. FICA should be required to plead with particularity in its petition, as is required by rule 28-106.201 and section 120.54(5)(b)4., Fla. Stat.

8. Section 120.569(2)(c), Florida Statutes, which governs decisions affecting substantial interests, provides in relevant part:

Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

(Emphasis supplied). See *Blackwood v. Agency for Health Care Admin.*, 869 So. 2d 656 (Fla. 4<sup>th</sup> DCA 2004) (upholding denial of petition for failure to comply with pleading requirements in rule 28-106.201(2)(e)); *Brookwood Extended Care Center of Homestead, LLP v. Agency for Health Care Admin.*, 870 So. 2d 834, 840 (Fla. 3d DCA 2003) (“The amended statute and rules are crystal clear. In a proceeding governed by Rule 28-106.201, the burden is now on the person or entity petitioning for an administrative hearing to state the ultimate facts, to identify the facts that are in dispute, and to allege the facts that warrant, in the petitioner’s opinion, reversal.”).

9. Because the FICA petition is not in substantial compliance with rule 28-106.201, the IOUs respectfully request that FICA be directed to provide a more definite statement as to the objections raised. In the alternative, the petition should be dismissed without prejudice, with an opportunity to file an amended petition. As provided in section 120.569(2)(c), FICA is entitled to one opportunity to file an amended petition that is in compliance with the rules.

10. This administrative challenge to the standard offer contracts raises questions about the status of those contracts during the course of the proceeding that has been requested to resolve the challenge. The IOUs believe it is in the best interests of all concerned, including the renewable industry, to resolve any concerns about the standard offer contracts as soon as possible. A more specific FICA petition would help accomplish this goal, as the IOUs would be in a better position to respond to FICA’s concerns and objections.

For the reasons expressed, the IOUs respectfully request that the Commission direct FICA to file a more definite statement as to its objections to the standard offer contracts. In the alternative, the IOUs request that the FICA petition be dismissed with an opportunity to amend within a timeframe established by the Commission.

Respectfully submitted,

s/ Susan F. Clark

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**CERTIFICATE OF SERVICE**

I **CERTIFY** that a true and correct copy of the foregoing has been furnished electronically or by U.S. Mail this 23rd day of July 2007, to the following:

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