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Subject: E-filing - Docket Nos. 070232-EQ; 070234-EQ; 070235-EQ; 070236EQ

Attachments: Response to Motion for More Definite Statement.pdf

ORIGINAL

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Docket Nos. and titles:

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 100 kW 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 on behalf of: Florida Industrial Cogeneration Association (FICA)

Number of pages: 5

Document attached: Response to 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

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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 100 kW 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 30, 2007

THE FLORIDA INDUSTRIAL COGENERATION ASSOCIATION'S RESPONSE TO 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 Section 28-106.204, Florida Administrative Code, the Florida Industrial Cogeneration Association (FICA) and its members, by and through their undersigned attorney, file this Response to Petitioners Gulf Power Company, Florida Power & Light Company, Progress Energy Florida, Inc., and Tampa Electric Company's (collectively the "IOUs") 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 filed in this matter on July 23, 2007. In support thereof, FICA says:

1. The IOUs essentially argue that FICA's Petition for Formal Hearing does not substantially comply with Florida law by failing to allege specific facts that warrant reversal or modification of the Commission's preliminary approval of the IOUs' standard offer contracts. The

IOUs seek, in the alternative, the dismissal of FICA's petition with leave to amend without prejudice or an order compelling FICA to provide a more definite statement. The IOUs' motion lacks legal merit, is unwarranted and should not be granted.

2. Florida law does not require that a bevy of specific facts be set forth in the initial pleading, only that the pleading contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." Fla. R. Civ. P. 1.110(b). "Therefore, rather than intricate and complex allegations designed to plead a litigant to victory, **brevity and clarity in the statement of the essential facts upon which the claim for relief rests are the hallmarks of good pleading**. Hence, pleading is not an end in itself; rather, it is the means by which justice is achieved." Ranger Construction Industries, Inc. v. Martin Companies of Daytona, Inc., 881 So. 2d 677, 680 (Fla. 5th DCA 2004) (emphasis added). Put simply, Florida law does not require that fine details of Petitioner's case be set forth in the initial pleading, as ample opportunity will be provided so that such details can be fleshed out during discovery, pretrial stipulations, and the issue identification process.

3. Indeed, the PSC process contemplates that specific details will be forthcoming as the case is prepared for hearing. Commission procedures and "procedural orders," including pre-hearing orders, typically set forth discovery provisions, provide for an issues identification process and seek the positions respective parties plan to take at hearing. Moreover, prehearing statements are required to be filed by each party and a mandatory prehearing conference is typically held prior to hearing for precisely these purposes. To illustrate the point that the detail the IOUs seek is properly handled through discovery and that the FICA Petition for Formal Hearing is legally sufficient, the following example is helpful: The IOUs complain that FICA did not detail the specific contractual provisions which do not promote the advancement of renewable energy in the state contained in the respective four contracts at issue. That level of detail is not required under Florida law, as a short and plain statement of the facts showing the pleader is entitled to relief, stated with brevity and clarity, will suffice. If every offending contractual provision had to be identified in FICA's Petition for Formal Hearing, the initial pleading would likely be extensive, intricate and complex. The IOUs, properly put on notice that FICA alleges the contracts in question do not promote the development of renewable energy in Florida, can satisfy their desire for detail by using the discovery process and asking FICA to identify each provision of each contract that FICA contends does not promote renewable energy development in Florida.

4. FICA met the key requirements of section 120.569, Florida Statutes, Rule 28-106.201(2)(e), F.A.C., and Fla. R. Civ. P. 1.110(b) with its initial Petition for Formal Hearing. At page 5 of its Petition, FICA specifically set out the following issues of disputed fact that are appropriately resolved following an evidentiary hearing:

- 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.
- 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.
- 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.

Further, FICA set forth the following issues of ultimate fact at page 4 of its Petition for Formal Hearing:

- that matters within the scope of this proceeding will affect the cost, availability, reliability and security of electricity supplies;
- that matters within the scope of this proceeding will determine to what extent renewable energy resources will be promoted;
- 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;
- 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.

5. These disputed issues of fact comply with Florida law regarding the requirements of FICA's initial pleading. The Petition for Formal Hearing filed by FICA states with **brevity** and **clarity** that FICA contends, and will present facts to support the notion that the contracts, payments, calculations, and contract terms and conditions do not support the development of renewable energy in Florida.

WHEREFORE, for the foregoing reasons, the Commission should deny the IOUs' Motion for More Definite Statement, or in the alternative, Motion to Dismiss FICA's Petition for Formal Hearing and For Leave to Intervene.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and by U.S. mail this 30th day of July, 2007, to the following:

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