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Subject: Electronic Filing for Docket No. 070650-EI / FPL's Response to Jan and Bob Krasowski's Petition to Intervene
Attachments: FPL's Response to Jan and Bob Krasowski's Petition to Intervene.doc

Electronic Filing

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b. Docket No. 070650-EI

In re: Florida Power & Light Company's Petition to Determine Need for Turkey Point Nuclear Units 6 and 7 Electrical Power Plant

c. The document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 7 pages in the document.

e. The document attached for electronic filing is Florida Power & Light Company's Response to Jan and Bob Krasowski's Petition to Intervene.

(See attached file: FPL's Response to Jan and Bob Krasowski's Petition to Intervene.doc)

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FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's)
Petition to Determine Need for)
Turkey Point Nuclear Units 6 and 7)
Electrical Power Plant)

Docket No. 070650-EI

Filed: December 10, 2007

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO
JAN AND BOB KRASOWSKI'S PETITION TO INTERVENE**

Pursuant to 28-106.204, Florida Administrative Code, Florida Power & Light Company ("FPL") hereby files its response to the petition to intervene filed by Jan and Bob Krasowski ("the Krasowskis") on December 3, 2007, and in support thereof states:

1. The Krasowskis allege that they are retail customers of FPL. FPL does not object to the Krasowskis' intervention, but asks that the Florida Public Service Commission ("Commission") clarify its grant of intervention as discussed below.

I. The Krasowskis' Participation Should Be Expressly Limited to Those Interests Not Represented by the Office of Public Counsel

2. The Krasowskis dispute generally that Turkey Point 6 and 7 satisfies each element of the statute governing this need determination. FPL notes that the Krasowskis have identified the statutory elements required for a determination of need pursuant to section 403.519(3), which does not apply to nuclear power plants, as opposed to section 403.519(4), which does. In any event, a general examination of the proposed units under each element of 403.519(4) would not assist the Commission in reaching a decision on FPL's petition to determine need, as it would be duplicative of the role of the Commission Staff, as well as the Office of Public Counsel's ("OPC's") efforts in this docket. OPC will represent the interests of all retail customers in this proceeding, including the Krasowskis. See § 350.0611, Fla. Stat. (providing that "[i]t shall be the duty of the Public Counsel to provide legal representation for the people of the state in

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proceedings before the commission"). The Krasowskis allege no particular interest in this proceeding different from that of other retail customers, and they provide no explanation or support for the assertion that their rights and interests cannot be adequately represented by OPC as the representative of all retail customers.

3. Given OPC's role, FPL requests that the Commission require the Krasowskis to clearly identify those issues within the scope of this proceeding that will not be adequately addressed by OPC's participation and that will affect their particular substantial interests. FPL does not object to the Krasowskis' intervention in this proceeding. By not objecting to the Krasowskis' intervention on the basis that it is duplicative and redundant, however, FPL is not waiving future objections to unnecessary and duplicative intervention.

II. The Krasowskis' Participation Should Be Expressly Limited to Those Issues Within the Commission's Jurisdiction and the Scope of this Proceeding

4. The Krasowskis have also raised several issues in their petition that exceed the jurisdiction of the Commission and the scope of this proceeding as described below. Those issues are related to nuclear safety; the merits of Rule 25-6.0423, F.A.C.; the use of nuclear generation by electric utilities generally; and the Florida Energy Efficiency and Conservation Act. FPL asks that the Commission clarify in its order that these issues are not proper for this proceeding and that the Krasowskis may not pursue them here.

5. The Krasowskis assert that the permitting of Turkey Point 6 and 7 would be contrary to the Commission's historical behavior of protecting the safety of the residents of the State. Krasowski Petition at 4. Issues related to nuclear safety, however, are not within the Commission's jurisdiction. The United States Nuclear Regulatory Commission has sole jurisdiction with respect to radiological health and safety. *See* 42 U.S.C. § 2021(c)(1); *Pacific Gas & Elec. Co. v. State Energy Conservation and Dev. Comm'n*, 461 U.S. 190, 208 (1983).

6. The Krasowskis next complain that, under Rule 25-6.0423, “the public’s responsibilities and obligations have been increased without appropriate compensation.” Krasowski Petition at 4. The propriety of Rule 25-6.0423 is clearly irrelevant to the Commission’s determination of need for Turkey Point Units 6 and 7. Moreover, the time has long passed to debate the adoption of that rule. It was adopted pursuant to Order No. PSC-07-0240-FOF-EI, issued March 20, 2007, following the formal rulemaking procedures required by the Florida Administrative Procedures Act. All interested persons, including the Krasowskis, were afforded ample opportunity to participate in the rulemaking proceeding and raise any concerns related to the then proposed rule. The Krasowskis should not be permitted to raise their concerns about the adoption of that rule in this need determination.¹

7. The Krasowskis also assert that risks associated with the proposed nuclear technology calls into question the appropriateness and prudence of its use. Krasowski Petition at 4. The type of risks to which the Krasowskis refer is not specified, but if those risks are related to safety, the issue is not within the Commission’s jurisdiction. *See* Paragraph 5, above. In any event, the use of nuclear generation is not only allowed but encouraged in Florida. The Florida Legislature amended section 403.519 of the Florida Statutes to establish new criteria for determining the need for new nuclear capacity and also directed the Commission to establish alternative mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant. § 366.93, Fla. Stat. (2006); *see* Rule 25-6.0423, F.A.C. Accordingly, to the extent the Krasowskis intend to dispute the use of nuclear generation as a

¹ Beyond untimeliness, the Krasowskis’ challenge to Rule 25-6.0423 is simply unavailing. The rule’s purpose tracks closely the Legislature’s directive in section 366.93, Florida Statutes, so their rule challenge really amounts to an attack on the statute, which is clearly beyond the Commission’s power to address.

policy matter, the issue falls outside the scope of the Commission's review of a petition to determine need pursuant to section 403.519, Florida Statutes.

8. The Krasowskis list all of the Florida Energy Efficiency and Conservation Act, sections 366.80-366.85 and 403.519, as a statutory basis for the relief they have requested. Only section 403.519 governs this proceeding, and sections 366.80-366.85 cannot provide any basis for relief in this proceeding. It is not clear whether the Krasowskis intend to raise issues related to sections 366.80-366.85. If they do, the Commission should clarify that such issues fall outside the scope of the Commission's review of a petition to determine need.

9. If the Krasowskis are permitted to intervene, the Commission should clarify that the scope of this proceeding does not include issues related to nuclear safety; the adoption of Rule 25-6.0423, F.A.C.; the appropriateness of the use of nuclear generation as a policy matter; or sections 366.80-366.85 of the Florida Energy Efficiency and Conservation Act.

WHEREFORE, FPL respectfully requests that the Commission clarify the proper scope of this proceeding and of the Krasowskis' participation therein, as described above.

Respectfully submitted this 10th day of December, 2007.

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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 United States mail this 10th day of December, 2007, to the following:

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