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Subject: Electronic Filing for Docket No. 070234-EQ / FPL's Response in Opposition to Motion to Hold Docket in Abeyance
Attachments: Response in Opposition to Motion to Hold Docket in Abeyance.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 070234-EQ

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

c. Documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of 4 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to Motion to Hold Docket in Abeyance

(See attached file: Response in Opposition to Motion to Hold Docket in Abeyance.doc)

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DOCUMENT NUMBER-DATE

01372 FEB 21 8

2/21/2008

FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

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: February 21, 2008

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO WHEELABRATOR TECHNOLOGY, INC.'S
MOTION TO HOLD DOCKET IN ABEYANCE**

Pursuant to 28-106.204, Florida Administrative Code, Florida Power & Light Company ("FPL") hereby files its response to the motion to hold docket in abeyance filed by Wheelabrator Technologies, Inc. ("Wheelabrator"), and in support thereof states:

1. On June 11, 2007, the Florida Public Service Commission ("the Commission") issued a proposed agency action ("PAA") order in this docket approving FPL's Petition for Approval of Renewable Energy Tariff and Standard Offer Contract. That order approved FPL's tariff effective May 22, 2007, and ordered that the tariff shall remain in effect pending the resolution of any protest of the Commission's PAA order. On July 2, 2007, as amended on September 17, 2007, the Florida Industrial Cogeneration Association ("FICA") filed a petition to intervene and a protest of the Commission's PAA order requesting a formal hearing. FICA's protest was the only protest filed to FPL's tariff.

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2. On January 25, 2008, Wheelabrator filed a petition to intervene that is currently pending. On February 15, 2008, Wheelabrator filed its motion to hold docket in abeyance.

3. On February 18, 2008, FICA withdrew its protest and participation as a party. Therefore, the sole protest to FPL's tariff has been resolved and the PAA order is no longer contested. Where, as here, a PAA order is protested, and the protest is withdrawn, then the hearing should be cancelled and the PAA order should be made final and effective. *See In re: Initiation of Show Cause Proceedings against Aloha Utilities, Inc.*, 2003 WL 1738978 (Fla. P.S.C.), Order No. PSC-03-0397-FOF-SU (March 21, 2003). As shown in the *Aloha Utilities* order, even where the participation of an intervenor has been granted – which is not the case in the present proceeding, where Wheelabrator's petition to intervene has only been filed but has not been granted – the correct legal result is for the PAA order to become final. *See id.* (stating that the Office of Public Counsel, as an intervenor that did not protest the PAA order at issue in that docket, must “take the case as they find it”); *see also* 25-22.039, F.A.C. Because there is no longer any protest of the PAA order as to FPL, there are no proceedings to abate, and Wheelabrator's motion to hold the docket in abeyance is moot.¹

4. Because the protest in this matter has been withdrawn, there is not even a protest remaining for FPL to move to dismiss. The Commission should therefore issue an order as it did when the PAA order protest was withdrawn in *Aloha Utilities*, stating that its PAA order is now final. Issuing an order clarifying that the PAA order is now final is not only consistent with the Commission's past practice and rules of procedure, but also would be consistent with the Legislature's intent and FPL's interest in having a Standard Offer Contract for renewable energy purchases continuously available. *See* Section 366.91(3), Fla. Stat. (“On or before January 1,

¹Additionally, Wheelabrator's petition to intervene itself has become moot, as there is no longer any contested proceeding in which to intervene.

2006, each public utility must continuously offer a purchase contract to producers of renewable energy.”). Furthermore, entering such an order would not prejudice Wheelabrator’s or any other party’s right to review and, if appropriate, seek to be heard with respect to FPL’s 2008 standard offer contract scheduled to be filed in April 2008, the anticipated filing of which in any event is at the core of Wheelabrator’s motion to hold the docket in abeyance.

5. Progress Energy Florida, Inc. (“Progress”) has authorized FPL’s counsel to state that Progress supports this response to Wheelabrator’s motion to the extent that said motion could be construed as also to be with respect to Docket 070235-EQ.

WHEREFORE, for the foregoing reasons, FPL requests that the Commission dismiss Wheelabrator’s motion to hold docket in abeyance as moot.

Respectfully submitted this 21st day of February, 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and/or U.S. Mail this 21st day of February, 2008, to the following:

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