

**Ruth Nettles**

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**From:** Cano, Jessica [Jessica.Cano@fpl.com]  
**Sent:** Friday, August 22, 2008 4:18 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Electronic Filing for Docket No. 080002-EI / FPL's Response in Opposition to Amended Petition to Intervene of Saporito Energy Consultants  
**Attachments:** FPL's Response in Opposition to Amended Petition to Intervene.doc; Attachment 1, Letter to Mr. Saporito.pdf

**Electronic Filing**

**a. Person responsible for this electronic filing:**

Jessica A. Cano, Esq.  
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**b. Docket No. 080002-EI, In re: Energy Conservation Cost Recovery Clause**

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

**d. There are a total of 4 pages in the document, and 1 page in Attachment 1 to that document.**

**e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to Amended Petition to Intervene of Saporito Energy Consultants.**

Sincerely,

Jessica A. Cano  
Attorney

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FPSC-COMMISSION CLERK

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Energy Conservation )  
Cost Recovery Clause )

Docket No. 080002-EI  
Filed: August 22, 2008

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO  
AMENDED PETITION TO INTERVENE OF SAPORITO ENERGY CONSULTANTS**

Florida Power & Light Company ("FPL") respectfully responds in opposition to the amended petition for intervention of Thomas Saporito as an individual, and representing Saporito Energy Consultants ("SEC"), and states as follows.

**Background and Summary**

On August 8, 2008, Mr. Saporito filed a "Petition for Hearing and Leave to Intervene" as an individual and as a representative of SEC with a purported interest in the Sunshine Energy Program. On August 15, 2008, FPL filed a Response in Opposition to that petition. On August 18, 2008, Mr. Saporito filed an "Amended Petition for Leave to Intervene...in Response to Florida Power & Light Company's 15 Aug 2008, Response[.]" Because this amended petition fails to allege any new facts sufficient to provide a basis for standing to intervene, and because it is a reply to FPL's response which is not allowed by Commission rule, Mr. Saporito's amended petition should be denied.

**Argument**

FPL incorporates herein by reference its Response in Opposition filed on August 15, 2008, which explained that neither Mr. Saporito nor SEC were ever participants in the Sunshine Energy Program. The amended petition for intervention, like Mr. Saporito's first petition, does not allege any facts indicating that he will suffer any injury in fact, which is required to demonstrate he is entitled to intervene in this proceeding. *See Agrico Chemical Co. v.*

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*Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2<sup>nd</sup> DCA 1981). Mr. Saporito's alleged concern about other future FPL programs, for example, is not an injury in fact sufficient to demonstrate standing under *Agrico*. See Saporito Amended Petition, p. 3. Similarly, SEC's request to establish a business partnership with FPL – a request which has been denied by FPL – does not provide SEC with a basis for standing to intervene. See Saporito Amended Petition, p. 5; see also, FPL letter dated August 20, 2008 (Attachment 1). Ultimately, Mr. Saporito has again failed to show that either he or SEC will suffer an injury in fact which is of sufficient immediacy to entitle him to a hearing, and that his substantial injury is of a type or nature which the proceeding is designed to protect. See 406 So. 2d at 482.

Additionally, Mr. Saporito has not alleged any new facts demonstrating that SEC has the legal capacity to intervene in this proceeding. The fact that SEC is “accountable for taxation” (Saporito Amended Petition, p. 5) does not demonstrate that legal capacity to sue or be sued has been granted by the legislature, and the fact that income received by SEC must be accounted for by Mr. Saporito on his personal tax return is support for the position that the interests of the private company are not discernable from the interests of Mr. Saporito. Accordingly, Mr. Saporito has not shown that SEC has the capacity to intervene in this proceeding.

Mr. Saporito also attempts to demonstrate that he is entitled to appear and represent the interests of FPL's customers in general. While customers are from time to time permitted to intervene and represent their own interests as a *pro se* participant, only an attorney or a “qualified representative” can represent the interests of others. Rule 28-106.106(1), Fla. Admin. Code. Despite Mr. Saporito's alleged past participation as a *pro se* intervenor, any such intervention would have been limited to Mr. Saporito's personal interests.<sup>1</sup> As described above

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<sup>1</sup> FPL has been unable to find an example of a proceeding where Mr. Saporito participated as an intervenor. Mr. Saporito did appear as a public witness (not an intervenor) in one hearing related to the recovery of replacement fuel

and more fully in FPL's August 15, 2008 Response, Mr. Saporito has not demonstrated any personal interest that satisfies the standing requirements for intervention set forth in *Agrico*.

Finally, the Commission should not consider Mr. Saporito's filing because it is in the nature of a reply to FPL's Response in Opposition to his original filing. Neither the Uniform Rules of Procedure nor the Commission's Rules Governing Practice and Procedure allow a reply to a response, and the Commission has routinely declined to consider such replies. *See, e.g., In Re: Petition for determination of 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, Order No. PSC-07-0032-PCO-EU (issued January 9, 2007).*

#### **Conclusion**

WHEREFORE, for all of the foregoing reasons, FPL respectfully requests that the Commission deny the amended request for intervention and response filed by Thomas Saporito, as an individual, and representing Saporito Energy Consultants.

Respectfully submitted this 22nd day of August, 2008.

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and purchased power costs, but no refunds were ordered in that proceeding, contrary to the assertion made in his amended petition. *In re: Fuel and purchased power cost recovery clause with generation performance incentive factor, Docket No. 900001-EI, Order No. 23232 (issued July 20, 1990), 115 P.U.R. 4th 443 (Fla. P.S.C.).*

**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 22nd day of August 2008, to the following:

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