

**Ruth Nettles**

---

**From:** Dana Greene [DanaG@hgslaw.com]  
**Sent:** Monday, July 13, 2009 9:56 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** fself@lawfla.com; Martha Brown; John.Butler@fpl.com; Natalie.Smith@fpl.com; Wade.Litchfield@fpl.com; Gary Perko; Brooke Lewis; Carolyn Raepple  
**Subject:** Docket 090172-EI  
**Attachments:** Docket 090172 - FPL's Response in Opposition to FGT's Motion.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Gary V. Perko  
Hopping Green & Sams, P.A.  
123 S. Calhoun Street  
Tallahassee, FL 32301  
1-850-425-2359  
garyp@hgslaw.com

b. Docket No. 090172-EI

In re: Petition to Determine Need for FPL EnergySecure Pipeline

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

d. There are a total of 5 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to Florida Gas Transmission Company, LLC's Motion for Leave to File Surrebuttal Testimony.

Thank you for your cooperation.

Dana Greene, Legal Assistant to  
William H. Green & Gary V. Perko  
Hopping Green & Sams, P.A.  
123 South Calhoun Street  
P.O. Box 6526  
Tallahassee, Florida 32314  
850-425-3437 (direct)  
850-224-8551 (fax)  
danag@hgslaw.com

DOCUMENT NUMBER-DATE

06963 JUL 13 3

7/13/2009

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's  
Petition to Determine Need for FPL  
Florida EnergySecure Pipeline

DOCKET NO. 090172-EI

FILED: July 13, 2009

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION  
TO FLORIDA GAS TRANSMISSION COMPANY, LLC'S MOTION  
FOR LEAVE TO FILE SURREBUTTAL TESTIMONY**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby responds in opposition to Florida Gas Transmission Company, LLC's ("FGT's") Motion for Leave to File Surrebuttal Testimony. As further discussed below, FGT utterly fails to cite any authority or record support for its last-minute attempt to supplement its case to the prejudice of FPL. Accordingly, FGT's Motion must be denied.

1. On April 7, 2009, FPL initiated this proceeding by filing its Petition to Determine Need for the FPL Florida EnergySecure Line, along with pre-filed direct testimony of several witnesses. As the petitioner, FPL carries the ultimate burden of proof in this proceeding. *See, Department of Transp. v. J.W.C. Co., Inc.*, 396 So.2d 778, 788 (Fla.1st DCA 1981).

2. On May 15, 2009, the Commission entered Order No. PSC-09-0337-PCO-EI, which established the schedule for filing additional testimony in this proceeding. The schedule allowed for intervenors, such as FGT, to file direct testimony in response to FPL's testimony. It then allowed FPL, as the party with the burden of proof, to file rebuttal testimony. As FGT notes in its Motion, the established procedure did not allow for a second set of testimony by FGT (Motion, ¶3). This is consistent with the procedural orders issued in numerous prior need for power proceedings, which appropriately have given the petitioner, as the party bearing the

DOCUMENT NUMBER-DATE

06963 JUL 13 2

FPSC-COMMISSION CLERK

burden of proof, the “last word” via rebuttal testimony.<sup>1</sup> FGT is simply wrong in asserting that it is “usual” in Commission proceedings that the parties are permitted to file direct and rebuttal testimony concurrently (Motion, ¶3).<sup>2</sup>

3. In any event, FGT has not requested an opportunity to file *concurrent* rebuttal, it is attempting to secure the “last word” through *unilateral* surrebuttal. The Commission previously has recognized that surrebuttal testimony is only appropriate if a party’s rebuttal testimony raises new issues that were not addressed in its adversary’s direct case. See Order No. PSC-00-2036-PCO-TP issued in Docket No. 991534-TP (June 13, 2000) (denying motion for leave to file surrebuttal testimony where rebuttal testimony “does not appear to introduce any

---

<sup>1</sup> See, e.g., *In Re: Petition to Determine Need for Greenland Energy Center Combined Cycle Conversion in Duval County by JEA*, Order No. PSC-08-0669-PCO-EM issued in Docket No. 080614-EM (Oct. 9, 2008); *In Re: Petition for Determination of Need for Conversion of Riviera Plant in Palm Beach County and Cape Canaveral Plant in Brevard County, by FPL*, Order No. PSC-08-0330-PCO-EI, issued in Docket Nos. 080245-EI and 080246-EI (May 22, 2008); *In Re: Petition to Determine Need for Cane Island Power Park Unit 4 Electrical Power Plant in Osceola County, by Florida Municipal Power Agency*, Order No. PSC-08-0322-PCO-EM, issued in Docket No. 080253-EM (May 15, 2008); *In Re: Petition for Determination of Need for Levy Units 1 and 2 Nuclear Power Plants, by Progress Energy Florida, Inc.*, Order No. PSC-08-0151-PCO-EI, in Docket No. 080148-EI (Mar. 12, 2008); *In Re: Petition to Determine Need for Turkey Point Nuclear Units 6 and 7 Electrical Power Plant, by FPL*, Order No. PSC-07-0869-PCO-EI, issued in Docket No. 070650-EI (Oct. 30, 2007); *In Re: Petition for Determination of Need for Expansion of Turkey Point and St. Lucie Nuclear Power Plants, for Exemption from Bid Rule 25-22.082, F.A.C., and for Cost Recovery through the Commission's Nuclear Power Plant Cost Recovery Rule, Rule 25-6.0423, F.A.C.*, Order No. PSC-07-0819-PCO-EI in Docket No. 070602-EI (Oct. 11, 2007); *In Re: Petition to Determine Need for Polk Unit 6 Electrical Power Plant, by Tampa Electric Company*, Order No. PSC-07-0639-PCO-EI, issued in Docket No. 070467-EI (Aug. 6, 2007).

<sup>2</sup> Although FGT cites no authority this proposition in its Motion, the Commission has provided for concurrent direct and rebuttal filings in certain generic telecommunication proceedings, such as those conducted in response to FCC rules. See, e.g., *In re: Implementation of requirements arising from Federal Communications Commission's triennial UNE review*, Order No. PSC-03-1055-PCO-TP issued in Docket No. 030852-TP (Sept. 22, 2003). In those cases, however, there is no petitioner, but competing companies with no clearly delineated burden of proof. As such, those proceedings are clearly distinguishable from need determination proceedings in which the utility requesting specific relief bears the ultimate burden of proof.

new issues.”). In its Motion, FGT fails to cite a single, specific instance in which FPL's rebuttal testimony addresses a point that was not raised by FGT's witnesses. Contrary to FGT's assertion, FPL's rebuttal testimony did not raise any matters “for the first time” as all information, analyses and exhibits provided in FPL's rebuttal testimony responded directly to points raised in FGT's direct testimony. As such, FGT's motion must fail. To the extent FGT believes that FPL's rebuttal testimony somehow “misconstrued” or “otherwise incorrectly represent[ed]” the testimony of FGT's witnesses (Motion, ¶4), FGT can address those matters through cross-examination.

4. Having been aware of the procedural schedule for almost two months, FGT has improperly and prejudicially waited until the last minute to request leave to file surrebuttal testimony on the Friday before the last week of discovery. Most importantly, allowing FGT to file surrebuttal testimony at this late date would deprive FPL the ability to respond to FGT's new assertions, many of which are wildly inaccurate both as to the facts stated and conclusions drawn.<sup>3</sup> It also would preclude FPL from conducting meaningful discovery. In fact, the depositions of FGT's witnesses are scheduled for Tuesday, July 14, leaving only one business day for FPL counsel to prepare to examine FGT's witnesses regarding their proffered surrebuttal testimony. Contrary to FGT's assertion, the filing of surrebuttal at this late date would not “facilitate the ability ... to better understand FGT's positions”; it would allow FGT to game the process to FPL's prejudice.

---

<sup>3</sup>Although specific responses to FGT's allegations are not warranted at this time, FPL reserves the right to move to strike FGT's testimony if FGT is granted leave to file.

WHEREFORE, for the reasons stated above, Florida Power & Light Company respectfully requests that Florida Gas Transmission Company, LLC's Motion for Leave to File Surrebuttal Testimony be denied.

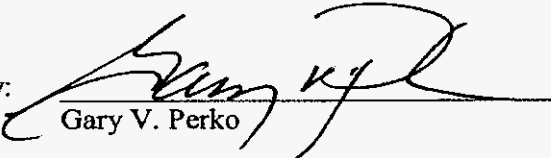
RESPECTFULLY SUBMITTED this 13th day of July, 2009.

R. Wade Litchfield, Vice President, Regulatory  
Affairs, and Chief Regulatory Counsel  
John T. Butler, Managing Attorney  
Scott A. Goorland, Principal Attorney  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420

and

Gary V. Perko  
Carolyn S. Raeppe  
Brooke E. Lewis  
HOPPING GREEN & SAMS, P.A.  
123 S. Calhoun Street (32301)  
P.O. Box 6526 (32314)  
Tallahassee, Florida  
850-222-7500  
Fax: 850-224-8551

By:

  
Gary V. Perko

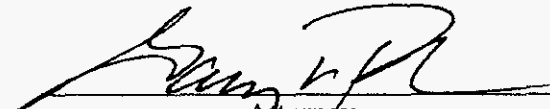
Attorneys for Florida Power & Light Company

**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 13th day of July, 2009, to the following:

Martha Carter Brown  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
MBrown@psc.state.fl.us

Floyd R. Self  
Messer Caparello & Self, P.A.  
2618 Centennial Place  
Tallahassee, FL 32308  
fself@lawfla.com



Attorney