Marguerite McLean 110018-EU

From: Lowe, Amy [Amy.Lowe@fpl.com]

Sent: Friday, February 18, 2011 4:59 PM

To: Filings@psc.state.fl.us

Cc: Adam Teitzman; danlarson@bellsouth.net; richzambo@aol.com; marsha@reuphlaw.com; Anderson, Bryan; Cox, Will P.; Donaldson, Kevin; 'Kelly.jr@leg.state.fl.us'; 'mcglothlin.joseph@leg.state.fl.us'

Subject: electronic filing in Docket 110018-EU

Attachments: Joint Motion for Leave to File Response in Opposition to Larson Petition to Intervene FINAL.doc; Joint Motion for Leave to File Response in Opposition to Larson Petition to Intervene FINAL.doc; Joint Motion for Leave to File Response in Opposition to Larson Petition to Intervene FINAL.pdf; Joint Motion for Leave to File Response in Opposition to Larson Petition to Intervene FINAL.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Bryan S. Anderson, Esq.
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5253
Bryan.Anderson@fpl.com

b. Docket No. 110018-EU

In Re: Joint petition for modification to determination of need for expansion of an existing renewable energy electrical power plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power & Light Company, and for approval of associated regulatory accounting and purchased power agreement cost recovery.

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

d. There are a total of twenty (20) pages.

e. The document attached for electronic filing is:

FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO PETITION TO INTERVENE OF DANIEL LARSON AND ALEXANDRIA LARSON

See attached file(s):
Joint Response in opposition to Larson petition to intervene 021811 FINAL.doc
Joint Motion for Leave to file Response in Opposition to Larson petition to intervene FINAL.doc
Joint Response in opposition to Larson petition to intervene 021811 FINAL.pdf
Joint Motion for Leave to file Response in Opposition to Larson petition to intervene FINAL.pdf

Amy Lowe, CP
Certified Paralegal
Senior Legal Assistant to
Bryan Anderson, Managing Attorney
William P. Cox, Senior Attorney
Florida Power & Light Company
Office: (561) 304-5608 Fax: (561) 691-7135
Email: amy.lowe@fpl.com

2/21/2011


Please consider the environment before printing this email

2/21/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for Modification to)	Docket No. 110018-EU
Determination of Need for Expansion of an Existing)	Date: February 18, 2011
Renewable Energy Electrical Power Plant in Palm)	
Beach County by Solid Waste Authority of Palm)	
Beach County and Florida Power & Light Company,)	
And for Approval of Associated Regulatory)	
Accounting and Purchased Power Agreement)	
Cost Recovery)	

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY AND FLORIDA POWER & LIGHT COMPANY'S JOINT MOTION FOR LEAVE TO FILE RESPONSE IN OPPOSITION TO PETITION TO INVERVENE OF DANIEL LARSON AND ALEXANDRIA LARSON

Solid Waste Authority of Palm Beach County and Florida Power & Light Company (collectively, "Joint Petitioners"), pursuant to Rules 25-22.039, 28-106.205, and 28-106.204, Florida Administrative Code, hereby jointly move the Commission for leave to file the response attached hereto as Exhibit 1 (the "Joint Petitioners Response") in opposition to the Petition to Intervene filed on February 9, 2011, (the "Larson Petition") by Daniel Larson and Alexandria Larson (the "Larsons") in the above referenced docket. In support of its Motion, the Joint Petitioners state as follows:

1. Rule 28-106-205 provides that, when persons other than the original parties to a pending proceeding petition the presiding officer for leave to intervene, "..., the parties to the proceeding may within seven days of services of the petition, file a response in opposition." By virtue of the Larson Petition, the Joint Petitioners and any other parties were entitled to file a response.

2. It was not until after the normal seven day time-period for responding to the Larson Petition had run, that Joint Petitioners were made fully aware of the potential negative impacts the Larsons' intervention could have on this proceeding. That occurred after receiving

the Larsons' email response, submitted late on the evening of February 16, 2011 (attached hereto as Exhibit 2), to the Commission Staff's proposed hearing schedule for this proceeding. The email response disregards important elements of practice and procedure, such as the statutory time constraints imposed on the Commission in rendering a decision on Joint Petitioners' pending petition for determination of need, and attempts to assert control over the discovery schedule developed and proposed by Commission Staff to timely comply with those time constraints.

3. Such a response indicates that the Larsons' proposed intervention may be designed for an improper purpose that may warrant the awarding of attorneys' fees to the Joint Petitioners pursuant to 120.595, Fla. Stat. Florida law and applicable Commission precedent require that the Larsons take the case as they find it. As a result and consistent with Commission precedent, equitable tolling applies, and the Commission should grant this Motion consistent with Commission precedent. See, *e.g*, Order No. PSC-98-1089-PCO-WS, dated August 11, 1998, in Docket No. 970657-WS, In Re: Application for Certificates to Operate a Water and Wastewater Utility in Charlotte and DeSoto Counties by Lake Suzy Utilities, Inc.; Order No. PSC-97-0470-FOF-WU, dated April 23, 1997, in Docket No. 960867-WU, In Re: Application for Amendment of Certificate No. 427-W to Add Territory in Marion County by Windstream Utilities Company.

4. Joint Petitioners assert that no party to this proceeding will be prejudiced by granting this motion as Joint Petitioners are aware of no person that has been granted intervention to date.

5. For these reasons and others as stated herein, and in the interest of administrative efficiency and fairness, Joint Petitioners respectfully request that the Commission: (i) waive the

normal seven-day time period for filing a response; (ii) accept this response for filing; and (iii) issue an affirmative order granting our request.

WHEREFORE, for the foregoing reasons, the Joint Petitioners respectfully move for leave to file the response attached hereto as Exhibit 1.

Respectfully submitted on this 18th day of February, 2011.

/s/ Richard A. Zambo
Richard A. Zambo
Fla. Bar No. 312525
Richard A. Zambo, P.A.
2336 S.E. Ocean Boulevard, #309
Stuart, Florida 34966
Phone: (772) 221-0263
Fax: (772) 283-6736
richzambo@aol.com

and

Marsha E. Rule
Fla. Bar No. 0302066
Rutledge, Ecenia & Purnell, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
Phone: (850) 681-6788
Fax: (850) 681-6515
marsha@reuphlaw.com

/s/ Bryan S. Anderson
Bryan S. Anderson
Managing Attorney
Authorized House Counsel
Florida Bar No. 219511
Admitted: IL

William P. Cox
Senior Attorney
Kevin I.C. Donaldson
Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Phone: (561) 304-5253
Fax: (561) 691-7135
bryan.anderson@fpl.com
will.p.cox@fpl.com
kevin.donaldson@fpl.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 18th day of February, 2011, to the following:

Adam J. Teitzman
Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-1400
E-mail: ateitzma@psc.state.fl.us

Office of Public Counsel *
J.R. Kelly
Joseph A. McGlothlin
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
E-mail: KELLY.JR@leg.state.fl.us

Daniel and Alexandria Larson*
16933 W. Narlena Dr.
Loxahatchee, Florida 33470
E-mail: danlarson@bellsouth.net

* Indicates interested person

By: */s/ Bryan S. Anderson*
Bryan S. Anderson
Authorized House Counsel
Florida Bar No. 219511
Admitted: IL

EXHIBIT 1

EXHIBIT 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for Modification to Determination of Need for Expansion of an Existing Renewable Energy Electrical Power Plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power & Light Company, And for Approval of Associated Regulatory Accounting and Purchased Power Agreement Cost Recovery	Docket No. 110018-EU Date: February 18, 2011

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY AND FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO PETITION TO INTERVENE OF DANIEL LARSON AND ALEXANDRIA LARSON

Solid Waste Authority of Palm Beach County and Florida Power & Light Company ("Joint Petitioners") hereby respectfully respond in opposition to the petition to intervene filed by Daniel R. Larson and Alexandria Larson (the "Larsons"), and state as follows in support:

Background and Summary

1. On February 9, 2011, the Larsons filed the "Petition to Intervene" (the "Petition") seeking to intervene jointly in the above captioned docket. The stated purpose of the intervention is to address "whether approval of the proposed modification will impact their electric rates; their concern about the lack of specific details regarding the avoided unit and power purchase agreement; and whether the Commission Staff can properly evaluate the proposed modifications under the current discovery schedule."

2. The intervention request should be denied for several reasons. First, under Florida law, the request for intervention does not allege any facts entitling the Larsons to

intervene in this proceeding. Although the Commission from time to time has permitted individual customers of a utility to intervene in proceedings involving the utility serving them, in this case the Petition does not allege sufficient facts to show the Larsons will suffer injury in fact which is of sufficient immediacy. In fact, the underlying petition for need determination and related purchase power agreement demonstrate that the Larsons and all FPL and SWA customers will benefit from SWA's generation of and FPL's use of renewable energy and lower cost electricity. Therefore, even under the more relaxed approach that the Commission sometimes has applied, the Larsons have not alleged sufficient facts upon which intervention may be granted. Second, the Larsons have no standing to intervene in this proceeding based upon the discovery process between the parties to the underlying Commission proceeding and whether the Commission Staff will have adequate time to evaluate the proposals at issue in the Commission proceeding. These facts do not represent any immediate injury to the Larsons warranting a grant of intervention. The Larsons must take the case as they find it.

3. In reality, the Larsons are not seeking to protect their own, legitimate interests in Commission action. Rather, they seek to assume the Commission and its Staff's authority and responsibilities – to stand as a surrogate for the public institution and conduct the institution's business as they feel it should be conducted. Nothing in the law of standing permits intervention for such a purpose.

Argument

The applicable standards for intervention are provided in Section 120.52(13), Fla. Stat., and Rule 25-22.039, Fla. Admin. Code. Rule 25-22.039 states in relevant part:

> Persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petitions for leave to intervene must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceedings

> as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected though the proceeding. Intervenors take the case as they find it.

4. A review of the intervention request shows that it contains (i) no allegations by the Larsons of an entitlement to intervene based upon any constitutional or statutory right or Commission rule; and (ii) no facts which demonstrate that they will suffer injury in fact which is of sufficient immediacy. Absent such a showing, intervention should be denied.

5. Florida law provides a two-prong test for determining whether a party has a "substantial interest" entitling the party to intervene in a proceeding. Under this test, the Larsons must "...show 1) that they will suffer an injury in fact which is of sufficient immediacy to entitle them to a Section 120.57 hearing, and 2) that this substantial injury is of a type or nature which the proceeding is designed to protect." *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981). The court held that the first part of this test deals with "the degree of injury" and the second part of the test deals with "the nature of the injury." Id. Florida courts have held that the "injury in fact" must be both real and immediate and not speculative or conjectural. *See* International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla 3d DCA 1990); Village Park Mobile Home Assn, Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), review denied 513 So. 2d 1063 (Fla. 1987)

6. The few facts alleged in the Petition are 1) the Larsons are residential customers of FPL; 2) the FPL electric bill constitutes a significant portion of their monthly household expenses; and 3) approval of the proposed modification will impact their electric rates. Petition at ¶5. Nowhere within the Petition does it allege that the Larsons will suffer an injury in fact

which is of sufficient immediacy. The mere allegation that their electric rates may be "impacted" by approval of the proposed modification is speculative or conjectural at best. Their petition fails to allege a real and immediate injury that will occur as the result of Commission action on the underlying petition for need determination and purchase power agreement.

7. The Larsons make no attempt to refute or deny the fact that Commission approval of the underlying petition for need determination and purchase power agreement would result in benefits (and not harm) to FPL's customers through FPL's use of renewable energy and lower cost electricity and benefits to SWA's customers through cost effective disposal of solid waste and avoiding the need for new landfills. In fact, because the Petition and proposed purchase power agreement must be cost effective under Section 377.709, Fla. Stat. -- i.e., the cost of electrical capacity and energy produced by the proposed expanded solid waste facility of Solid Waste Authority of Palm Beach County ("SWA") and delivered to FPL is no greater than the cost to FPL of producing an equivalent amount of capacity and energy had SWA's facility not been constructed and operated -- there is not only no likelihood of harm or injury to the Larsons, but no possibility. Therefore, the Petition fails to satisfy the first prong, degree of injury, of the required two part *Agrico Chemical* standing test, and should be denied as the Larsons have not presented sufficient facts to have a legal right to intervene in these proceedings.

8. Additionally, the Larsons allege that they have a substantial interest in evaluating the FPL avoided unit costs used for the advance capacity payment and energy payments associated with SWA's proposed expanded solid waste facility at issue in the underlying petition for need determination. Petition at ¶5. Nowhere in the Petition do the Larsons show how the denial of their ability to evaluate this information will cause them injury which is real and immediate in nature. Similarly, the Larsons petition fails the first prong of the *Agrico Chemical* test and should be denied.

9. The Larsons' email response, submitted late on the evening of February 16, 2011 (attached hereto as Exhibit 1), to the Commission Staff's proposed hearing schedule for this proceeding makes clear the potential negative impacts the Larsons' intervention could have on this proceeding. The email response disregards important elements of practice and procedure, such as the statutory time constraints imposed on the Commission in rendering a decision on Joint Petitioners' pending petition for determination of need, and attempts to assert control over the discovery schedule developed and proposed by Commission Staff to timely comply with those time constraints. Such a response indicates that the Larsons' proposed intervention may be designed for an improper purpose, which could warrant the awarding of reasonable attorneys' fees and costs to the Joint Petitioners pursuant to 120.595, Fla. Stat.

WHERFORE, for all of the foregoing reasons, the Joint Petitioners respectfully request that the Commission deny the Petition and refuse to allow the Larsons to intervene in this proceeding. Alternatively, if the Larsons are permitted to intervene in any capacity, the Commission should make clear at the outset that their participation must be limited strictly to proper issues in this proceeding and that abuse and/or unwarranted delay of the proceeding will not be tolerated. Specifically, any order granting intervention should state that the Larsons must comply with applicable statutes and rules governing proceedings before the Commission.

Respectfully submitted on this 18th day of February, 2011.

s/ Richard A. Zambo
Richard A. Zambo
Fla. Bar No. 312525
Richard A. Zambo, P.A.
2336 S.E. Ocean Boulevard, #309
Stuart, Florida 34966
Phone: (772) 221-0263
Fax: (772) 283-6736
richzambo@aol.com

and

Marsha E. Rule
Fla. Bar No. 0302066
Rutledge, Ecenia & Purnell, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
Phone: (850) 681-6788
Fax: (850) 681-6515
marsha@reuphlaw.com

s/ Bryan S. Anderson
Bryan S. Anderson
Managing Attorney
Authorized House Counsel
Florida Bar No. 219511
Admitted: IL

William P. Cox
Senior Attorney
Kevin I.C. Donaldson
Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Phone: (561) 304-5253
Fax: (561) 691-7135
bryan.anderson@fpl.com
will.p.cox@fpl.com
kevin.donaldson@fpl.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 18th day of February, 2011, to the following:

Adam J. Teitzman
Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-1400
E-mail: ateitzma@psc.state.fl.us

Office of Public Counsel *
J.R. Kelly
Joseph A. McGlothlin
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
E-mail: KELLY.JR@leg.state.fl.us

Daniel and Alexandria Larson*
16933 W. Narlena Dr.
Loxahatchee, Florida 33470
E-mail: danlarson@bellsouth.net

* Indicates interested person

By: *s/ Bryan S. Anderson*
Bryan S. Anderson
Authorized House Counsel
Florida Bar No. 219511
Admitted: IL

EXHIBIT 2

Cox, Will P.

From:	danlarson [danlarson@bellsouth.net]
Sent:	Wednesday, February 16, 2011 11:09 PM
To:	Cox, Will P.; Richzambo@aol.com; marsha@reuphlaw.com; Adam Teitzman; me
Cc:	Larry Harris
Subject:	Re: 110018-EU; Revised Schedule Update

Mr teitzman,

We have filed a petition to intervene in docket 110018-EU.The petition has not yet been granted.We her object to the tentative hearing date of April 25 as additional time for discovery will be required.Please take the immediate action to add us as a party to this docket The June 14 DEP deadline is irrelevemt as the determination of need by the FPSC is a prerequisite for the siting process. Sincerely Alexandria & Daniel Larson

--- On **Wed, 2/16/11, Adam Teitzman** <*ATeitzma@PSC.STATE.FL.US*> wrote:

From: Adam Teitzman <ATeitzma@PSC.STATE.FL.US>
Subject: 110018-EU; Revised Schedule Update
To: "Cox, Will P." <Will.P.Cox@fpl.com>, Richzambo@aol.com, marsha@reuphlaw.com
Cc: "Larry Harris" <LHarris@PSC.STATE.FL.US>, danlarson@bellsouth.net
Date: Wednesday, February 16, 2011, 4:28 PM

Staff met today to discuss a revised hearing schedule for this matter. If the SWA and FP&L are willing to agree to a 7 day response time for discovery, staff would agree to a tentative hearing date of April 25th. Staff would then file its recommendation for the June 14th Agenda. Taking into account the timeframe the parties have submitted to fully respond to staff's first set of discovery and the current June 14th DEP deadline, staff is concerned that without a 7 day response time staff will be unable to adequately prepare for an evidentiary hearing. If the SWA and FP&L are agreeable to this proposal, I will follow-up with a comprehensive revised procedural schedule.

Adam