

Diamond Williams

110018-EU

From: danlarsen [danlarsen@bellsouth.net]
Sent: Thursday, February 24, 2011 11:59 PM
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Subject: Electronic Filing (Docket 110018-EU)
Attachments: Motion in Opposition.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Mr. & Mrs. Daniel R. Larson
 16933 W. Harlena Dr.
 Loxahatchee, FL 33470
 Phone: (561) 791-0875
 Email: [danlarsen@bellsouth.net](mailto:d anlarsen@bellsouth.net)

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. Document being filed on behalf of:

Mr. & Mrs. Daniel R. Larson
 16933 W. Harlena Dr.
 Loxahatchee, FL 33470
 Phone: (561) 791-0875
 Email: [danlarsen@bellsouth.net](mailto:d anlarsen@bellsouth.net)

d. There are a total of 5 pages.

e. The document attached for electronic filing is: Motion in Opposition.pdf

Thank you for your attention and cooperation to this request.

Sincerely,

s/ Daniel R. Larson
 Daniel R. Larson
 Petitioner

s/ Alexandria Larson
 Alexandria Larson
 Petitioner

2/25/2011

DOCUMENT NUMBER-DATE
 01252 FEB 25 =
 FPSC-COMMISSION CLERK

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

FILED: February 24, 2011

MOTION IN OPPOSITION TO UNTIMELY RESPONSE

1. On February 9, 2011, petitioners filed a Petition to Intervene in the above captioned docket. Petitioners are residential customers of Florida Power & Light Company (FPL) and also served by the Solid Waste Authority of Palm Beach County (SWA). As of the date of this filing, the Prehearing Officer (Commissioner Edgar) has not yet granted intervention allowing petitioners to become a party to the proceeding in the above captioned docket.
2. On February 18, 2011, FPL and SWA filed a Joint Motion for Leave to File Response in Opposition to Petition to Intervene (w/ attachments) in the above captioned docket.
3. On February 21, 2011, FPL and SWA filed an amended Joint Motion for Leave to File Response in Opposition to Petition to Intervene (w/ attachments) in the above captioned docket.
4. Petitioners assert the Joint Motion filed on February 18, 2011, and the Amended Joint Motion filed on February 21, 2011, were untimely filed pursuant to Rule 28-106.205, Florida Administrative Code.

DOCUMENT NUMBER-DATE

01252 FEB 25 =

FPSC-COMMISSION CLERK

5. Petitioners further assert that FPL and SWA, as sophisticated parties represented by counsel, were fully aware, or should have been fully aware, of the seven day response time limitation imposed by Rule 28-106.205, Florida Administrative Code.
6. Petitioners hereby move to strike the Joint Motions as untimely filed pursuant to Rule 28-106.205, Florida Administrative Code. Petitioners assert the failure of the Joint Movants to conform to the requirements of Rule 28-106.205, Florida Administrative Code does not constitute excusable neglect, and further assert that the Joint Motions should not be considered by the Commission on the basis set forth in Paragraphs 1-5 above.
7. **Equitable Tolling**. Petitioners also object to the assertion within the Joint Motions that Equitable Tolling applies. Pursuant to section 403.507(4)(a), Florida Statutes, the Commission has 150 days after a petition is filed to issue an order granting or denying the Determination of Need. Therefore, to suggest that petitioners' e-mail response raising a contemporaneous objection to the proposed hearing date invokes the concept of Equitable Tolling is nothing more than a red herring as sufficient margin exists within the schedule to otherwise accommodate the petitioners' concerns. Petitioners merely sought to have a voice in the process given the fact that critical dates were being discussed, and the proceeding was moving forward without them, notwithstanding their Petition to Intervene in the above captioned docket. Furthermore, for the Commission to accept the absurd logic and unorthodox application of Equitable Tolling as suggested within the Joint Motions would equally imply that:
 - a. The statutory deadline of section 403.507(4)(a), Florida Statutes, should be equitably tolled on a day-for-day basis until a complete application for the Determination

of Need was received by Commission staff irrespective of the original filing date of the petition.¹

b. The statutory deadline of section 403.507(4)(a), Florida Statutes, should be equitably tolled on a day-for-day basis for excessive delay in otherwise approving a Petition to Intervene to allow potential parties to sufficient time to conduct discovery given the expedited discovery cutoff and hearing dates in this proceeding.²

8. The cutoff date for discovery is April 4, 2011, and the formal hearing is currently scheduled for April 7, 2011, in the above captioned docket.
9. Petitioners assert that their due process rights, and their ability to conduct discovery as a party in the above captioned docket, are being unjustly impaired by the failure of the Prehearing Officer to grant their Petition to Intervene in a timely manner given the critical dates in this proceeding.

¹ Petitioners assert that Commission staff stated that the application was “incomplete” during the noticed meeting held on February 9, 2011. Petitioners further assert that the cost effectiveness of the PPA cannot be evaluated in accordance with the statutory criteria until the avoided unit has been identified and the terms of the negotiated PAA are known. This information had not yet been submitted to the Commission in support of the Determination of Need when the petitioners sought to intervene; hence the application was incomplete.

² Petitioners filed their Petition to Intervene in the above captioned docket on February 9, 2011.

WHEREFORE, petitioners respectfully request the Commission to enter an order denying the Joint Motions as untimely filed pursuant to Rule 28-106.205, Florida Administrative Code, and further request the Commission enter an order granting the Petition to Intervene in the above captioned docket.

s/ Daniel R. Larson
Daniel R. Larson
Petitioner

s/ Alexandria Larson
Alexandria Larson
Petitioner

16933 W. Harlena Dr.
Loxahatchee, FL 33470
Phone: (561) 791-0875
danlarson@bellsouth.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following via Electronic Mail this 24th day of February, 2011 to all parties of record as indicated below.

s/ Daniel R. Larson
Daniel R. Larson
Petitioner

s/ Alexandria Larson
Alexandria Larson
Petitioner

<p>Florida Power & Light Company Mr. Ken Hoffman 215 South Monroe Street, Suite 810 Tallahassee, FL 32301-1858 Phone: (850) 521-3900 Fax: (850) 521-3939 Email: ken.hoffman@fpl.com</p> <p>Florida Power & Light Company Bryan S. Anderson/William P. Cox/Eric 700 Universe Boulevard Juno Beach, FL 33408-0420 Phone: 561-304-5253 Fax: 561-691-7135 Email: will.cox@fpl.com</p> <p>Richard A. Zambo, P.A. Richard A. Zambo 2336 S.E. Ocean Boulevard, #309 Stuart, FL 34996 Phone: 772-221-0263 Fax: 772-283-6756 Email: richzambo@aol.com</p>	<p>Rutledge Law Firm Marsha E. Rule 119 South Monroe Street, Suite 202 Tallahassee, FL 32301 Phone: 850-681-6788 Fax: 681-6515 Email: marsha@reuphlaw.com</p> <p>Solid Waste Authority Executive Director 7501 North Jog Road West Palm Beach, FL 33412 Phone: 561-640-4000 Fax: 561-640-3400 Email: mhammond@swa.org</p> <p>Ms. Kelly Sullivan - Attorney at Law 570 Osprey Lakes Circle Chuluota, FL 32766-6658 Phone: (321) 287-5062 Email: kelly.sullivan.woods@gmail.com</p>
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