

Dorothy Menasco

From: ROBERTS.BRENDA [ROBERTS.BRENDA@leg.state.fl.us]
Sent: Monday, February 28, 2011 1:55 PM
To: Filings@psc.state.fl.us
Cc: Dan Larson; John Moyle; John T. Butler (John.Butler@fpl.com); Keino Young; Kelly Sullivan; Ken Hoffman; Vickie Gordon Kaufman (vkaufman@kagmlaw.com)
Subject: e-filing (Dkt. No. 100410-EI)
Attachments: 100410.Pet. to Intervene & Protest of Order.sversion.doc

Electronic Filing

a. Person responsible for this electronic filing:

Joseph A. McGlothlin, Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
mcglothlin.joseph@leg.state.fl.us

b. Docket No. 100104-EU

In re: Review of Florida Power & Light Company's earnings.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 4 pages.

e. The document attached for electronic filing is Citizens' Notice of Intervention and Limited Response to Pending Motions for Reconsideration of Order No. PSC-11-0103-FOF-EI.
(See attached file: 100410.Pet.to Intervene & Protest of Order.sversion.doc)

Thank you for your attention and cooperation to this request.

Brenda S. Roberts
Office of Public Counsel
Telephone: (850) 488-9330
Fax: (850) 488-4491

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2/28/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Florida Power & Light)
Company's earnings.)
_____ /

Docket No. 100410-EI

Filed: February 28, 2011

**CITIZENS' NOTICE OF INTERVENTION AND LIMITED RESPONSE TO PENDING
MOTIONS FOR RECONSIDERATION OF ORDER NO. PSC-11-0103-FOF-EI**

The Citizens of the State of Florida, through the Office of Public Counsel, for the sole purpose of providing this limited response, file their Notice of Intervention and Limited Response to Pending Motions for Reconsideration, and state as follows:

1. Pursuant to Section 350.0611, Florida Statutes, the Citizens of the State of Florida, by and through J.R. Kelly, Public Counsel, serve their Notice of Intervention in this docket.
2. The Commission issued Order No. PSC-11-0103-FOF-EI on February 7, 2011. In this Order, the Commission declined to adopt its Staff's recommendation to initiate a review of Florida Power & Light Company's ("FPL's") earnings. Citizens, as a party to the Stipulation¹, continue to regard the terms of the Stipulation as the appropriate vehicle for regulating FPL's earned rate of return during the period of the Stipulation. The most recent evidence available indicates that the mechanism for maintaining FPL's ROE at or below 11% is working as intended.² Further, the Stipulation will preserve the 9-11% range on ROE and stringent

¹ The Stipulation was entered in Docket No. 080677-EI to resolve outstanding issues in FPL's last rate case and provide a framework for handling major regulatory issues during calendar years 2010, 2011, and 2012. The stipulation contains a mechanism that requires FPL to employ some \$776 million of depreciation reserve surplus as an "earnings governor"—using fewer available credits to depreciation to prevent FPL from exceeding the maximum 11% return on equity *and* more available credits to prevent it from reaching the "trigger point" of 9% that would entitle FPL to seek an increase in base rates. The Commission panel, consisting of Commissioners Graham, Brise, Skop and Edgar, approved the terms of the stipulation.

² FPL's most recent surveillance report, which covers the 12 month period ending December 31, 2010, indicates that it was earning within its authorized range for its Rate of Return during the period covered by the report.

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limitations on FPL's ability to increase base rates without exposing those and other benefits of the Stipulation to the vagaries and risks of potential litigation that would have attended the alternative course recommended by the Commission Staff.³

3. Citizens note that this matter was initially and consistently designated in the recommendation as subject to the Commission's Proposed Agency Action (PAA) process. The recommendation was published to the general public on the Commission's website as being subject to the PAA process. On January 7, 2011, only three days prior to the vote, a hand written change to the designation was made to indicate that the matter was not going to be handled as a PAA and that the correction was due to a "typographical error." Due to multiple deferrals, the recommendation had been published on the Commission's website with the PAA process designation six times prior to the hand written change.

4. While taking no position on the substance of the various pleadings and responses in this docket, Citizens note that the last minute change to the PAA designation could have caused a lack of timely and accurate notification to the general public as to the nature of the proceeding and the corresponding opportunity to provide comments. Citizens' limited purpose in this response is to urge the Commission to explain or clarify the circumstances surrounding the abrupt change in direction away from the PAA designation. Citizens are concerned that the facts of this "case" have created doubt about the circumstances under which a Commission ruling during an agenda conference will or will not lead to the issuance of a PAA. OPC believes that a limiting explanation would be helpful and valuable to future proceedings.

³ During the agenda conference, Staff acknowledged that the "earnings cap letter" mechanism described in Staff's recommendation is voluntary on the part of the utility, that there is no precedent for Staff's proposal to impose a refund condition on a utility at the same time a Commission-approved rate case settlement with that utility is in effect, and that in Staff Counsel's opinion there is a "real possibility" that implementation of Staff's recommendation would lead to a court test. See transcript, at pages 46-47; 57-59. While those who advocated the Staff's recommendation also professed a desire to see the settlement work, the scope of the issues in any litigation sometimes is beyond the ability of a single litigant to control.

5. Furthermore, since the Commission's rules are vague as to the criteria for the types of matters for which the Commission will consider using its PAA process and how the PAA process should proceed, Citizens also suggest that the Commission consider holding a workshop and/or conducting rulemaking on the matter.

WHEREFORE, Citizens request the Commission administratively approve its limited Notice of Intervention and give due consideration to the remarks in this Limited Response to Motions For Reconsideration of Order No. 11-0103-FOF-EI.

J.R. KELLY
PUBLIC COUNSEL

s/ Joseph A. McGlothlin
Joseph A. McGlothlin
Associate Public Counsel
Florida Bar No. 163771

Charles J. Rehwinkel
Deputy Public Counsel
Florida Bar No. 057299

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Rm. 812
Tallahassee, FL 32399-1400

(850) 488-9330

Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and foregoing **CITIZENS' NOTICE OF INTERVENTION AND LIMITED RESPONSE TO PENDING MOTIONS FOR RECONSIDERATION OF ORDER NO. PSC-11-0103-FOF-EI** has been furnished by electronic mail and U.S. Mail on this 28th day of February, 2011, to the following:

Keino Young
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

John T. Butler
Managing Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408

Daniel R. and Alexandria Larson
16933 W. Narlena Drive
Loxahatchee, FL 33470

Kelly Sullivan
570 Osprey Lakes Circle
Chuluota, FL 32766-6658

Jon C. Moyle, Jr.
Vicki Gordon Kaufman
Keefe, Anchors, Gordon & Moyle, P.A.
118 North Gadsden Street
Tallahassee, FL 32301

s/ Joseph A. McGlothlin
Joseph A. McGlothlin