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From: Kim Hancock [khancock@kagmlaw.com]
Sent: Thursday, February 16, 2012 10:53 AM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; Charles Murphy; john.butler@fpl.com; Vicki Gordon Kaufman; Jon Moyle
Subject: RE: Docket No. 110309-EI

Attachments: FIPUG Motion for Leave to File Response w Response 2.16.12.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

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b. This filing is made in Docket No. 110309-EI.

c. The document is filed on behalf of the Florida Industrial Power Users Group.

d. The total pages in the document are 7 pages.

e. The attached document is THE FLORIDA INDUSTRIAL POWER USERS GROUP'S MOTION FOR LEAVE TO FILE RESPONSE.

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DOCUMENT NUMBER - DATE

00892 FEB 16 2012

FPSC-COMMISSION CLERK

2/16/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for
Modernization of Port Everglades Plant, by
Florida Power & Light Company.

DOCKET NO. 110309-EI
FILED: February 16, 2012

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
MOTION FOR LEAVE TO FILE RESPONSE**

Pursuant to rule 28-106.204, Florida Administrative Code, the Florida Industrial Power Users Group (FIPUG), files this motion to permit it to file a brief response to Florida Power & Light Company's (FPL) Opposition to Florida Industrial Power Users Group's Petition to Intervene. As grounds to permit consideration of the brief attached response (Attachment A), FIPUG states:

1. On February 14, 2012, FIPUG filed a petition to intervene in this docket. FIPUG represents large industrial consumers who will be impacted by the Commission's decision in this matter.
2. On February 15, 2012, FPL filed a pleading in opposition to FIPUG's request, based, in part, on its claim that FIPUG's intervention was untimely.
3. In its response, FIPUG addresses only what it considers to be FPL's misinterpretation of the applicable rules related to calculating the days for intervention.
4. FPL will not be prejudiced by this brief response. Further, the Commission should have the pertinent and correct information before it when rendering a decision.
5. Pursuant to rule 28-106.303(3), Florida Administrative Code, counsel for FIPUG has consulted counsel for FPL and is authorized to represent that FPL objects to this motion.

DOCUMENT NUMBER-DATE

00892 FEB 16 2012

FPSC-COMMISSION CLERK

WHEREFORE, FIPUG requests that the Commission permit FIPUG to file the attached brief response.

s/ Vicki Gordon Kaufman

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Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Motion For Leave To File Response has been furnished by electronic mail and U.S. Mail this 16th day of February, 2012, to the following:

Adam Teitzman
Charles Murphy
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

John T. Butler
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420

s/Vicki Gordon Kaufman

Vicki Gordon Kaufman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for
Modernization of Port Everglades Plant, by
Florida Power & Light Company.

DOCKET NO. 110309-EI

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
RESPONSE TO FPL'S OPPOSITION TO FIPUG'S PETITION TO INTERVENE**

The Florida Industrial Power Users Group (FIPUG), files this brief response to Florida Power & Light Company's (FPL) Opposition to the Florida Industrial Power Users Group's Petition to Intervene. FPL has misinterpreted the applicable law. FIPUG seeks to have the Commission consider all relevant information before ruling on FIPUG's Petition to Intervene.

1. On February 14, 2012, FIPUG filed a petition to intervene in this docket. FIPUG represents large industrial consumers who will be impacted by the Commission's decision in this docket.

2. On February 15, 2012, FPL filed a pleading in opposition to FIPUG's request, based, in part, on its claim that FIPUG's intervention was untimely.

3. FIPUG files this brief response to point out a misinterpretation of the law in FPL's pleading regarding its argument that FIPUG's petition is untimely.¹

4. FPL relies on rule 28-106.103, Florida Administrative Code, for its claim that FIPUG's pleading is untimely. That rule, which is part of the Model Rules, states in pertinent part:

¹ FIPUG does not address any other aspects of FPL's opposition.

28-106.103 Computation of Time.

*In computing any period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.*²

Thus, this rule, by its explicit language, is applicable *only* to computation of time as it relates to rules in Chapter 28-106, Florida Administrative Code. However, FPL inappropriately expands the scope of rule 28-106.103 in its opposition pleading when it says: “When the period of time allotted under the *Florida Administrative Code* is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation of time. Rule 28-106.103, F.A.C.”³ The rule on which FPL relies does not relate to all rules in the Florida Administrative Code, as FPL states, but only to rules under Chapter 28-106.

5. In contrast, the rule at issue here is rule 25-22.039, Florida Administrative Code, a Commission-specific rule. That rule states, in pertinent part:

25-22.039 Intervention.

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 be filed at least five (5) days before the final hearing....*⁴

Rule 25-22.039 is a Commission rule and is an explicit exception to the Uniform Rules of Procedure found in Chapter 28-106, Florida Administrative Code. See, rule 25-40.001, Florida Administrative Code. The Commission’s intervention rule makes no exception for the inclusion of weekends and holidays when *intervention* time is computed.

² Emphasis added.

³ FPL Opposition at 2-3, emphasis added.

⁴ Emphasis added.

6. The *DPI-Teleconnect* case⁵ cited by FPL is inapplicable. That case dealt with the interpretation of rule 28-106.210, Florida Administrative Code, relating to motions for continuance. Rule 28-106.210 is a rule that falls under Chapter 28-106, Florida Administrative Code. Thus, the time computation of rule 28-106.103 was found applicable. This is not the case for the Commission's intervention rule – rule 25-22.039 – at issue here.

7. Since it is the Commission's explicit intervention rule which governs FIPUG's request, and not the more general Model Rule, *FIPUG's intervention is timely.*

8. Finally, in the case of a docket which involves a project currently estimated to cost over *1 billion dollars*, any doubt over whether to permit consumers to intervene and be heard should be resolved in consumers' favor.

WHEREFORE, FIPUG's petition to intervene should be granted.

s/ Vicki Gordon Kaufman

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⁵ *In re Complaint by DPI-Teleconnect, L.L.C. Against BellSouth Telecommunications, Inc. for Dispute Arising under Interconnection Agreement*, Docket No. 050863-TP, Order No. PSC-07-0791 (Fla. P.S.C. Sept. 27, 2007).

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Response to FPL's Opposition to FIPUG's Petition to Intervene has been furnished by electronic mail and U.S. Mail this 16th day of February, 2012, to the following:

Adam Teitzman
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s/Vicki Gordon Kaufman _____

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