

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for determination of need for) DOCKET NO. 150196-EI
Okeechobee Clean Energy Center Unit 1)
By Florida Power & Light Company)
_____)

**ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA’S
MOTION FOR RECONSIDERATION & CLARIFICATION**

The Environmental Confederation of Southwest Florida, Inc. (“ECOSWF”), pursuant to Rule 25-22.060, Florida Administrative Code (F.A.C.), hereby submits this Motion for Reconsideration & Clarification of Order No. PSC-15-0540-PCO-EI and in support states the following:

1. In Order No. PSC-15-0540-PCO-EI, it was found that this was “not the proper proceeding to revisit and/or change the applicability of the 20% reserve margin” and that “the Commission has the opportunity to review FPL’s application of the 20% minimum reliability criterion in the context of this need determination proceeding to determine whether FPL properly calculated and applied this criterion in assessing its need for power in 2019.” Order No. PSC-15-0540-PCO-EI at 3. It was also held that “any cross-examination questions pertaining to these issues are also inappropriate and the parties should govern themselves accordingly.” *Id.* at 4.

2. ECOSWF moves for reconsideration because a holding that the Commission, as a matter of law, is limited in its review regarding reliability to determining “whether FPL properly calculated and applied” the 20% criterion would violate section 403.519(3), F.S., which requires the Commission to account for “the need for electric system reliability and integrity,” when making a determination of need for a power plant. The appropriateness of the criteria that Florida Power & Light Co. (“FPL”) used when deciding how to meet its need while maintaining system reliability and integrity is subject to review by the Commission, and thus should be open to discussion in issues proposed by intervening parties.

3. The 1999 stipulation relied upon for the 20% reserve margin specifically stated that “[n]or shall said adoption or approval [of the stipulation] be deemed to create any presumption with respect to any proposals for adding generating capacity,” and that “the Commission shall retain the ability and discretion to consider all facts and circumstances applicable to a given utility and/or peninsular Florida. Further, with respect to the evaluation of the adequacy of reserves in peninsular Florida, the Commission . . . may consider any facts and circumstances it deems appropriate, subject to applicable legal requirements.” Order No. PSC-99-2507-S-EU at 9-10. Therefore, the 1999 stipulation specifically stated that it did not create any presumption regarding any proposal for adding generating capacity, and that the Commission may consider any facts and circumstances it deems appropriate. To hold that the 1999 stipulation eliminates the ability of the parties to question FPL’s proposed new generation based on its 20% reserve margin stretches the 1999 stipulation far beyond what is contained in the stipulation.

4. Holding that it is not appropriate to question the applicability of the 20% reserve margin criterion in evaluating FPL’s need determination in this specific proceeding also violates Rule 25-6.035(1), which states that “Peninsular Florida utilities shall be required to maintain, at a minimum, a 15% planned reserve margin.” Rule 25-6.035(1), F.A.C.

5. A broad reading of Order No. PSC-15-0540-PCO-EI, specifically where it states that “the Commission has the opportunity to review FPL’s application of the 20% minimum reliability criterion in the context of this need determination proceeding to determine whether FPL properly calculated and applied this criterion in assessing its need for power in 2019,” Order No. PSC-15-0540-PCO-EI at 3, could be read so as to preclude any evidence regarding reliability beyond whether FPL properly calculated its projected reserve margin in 2019. It could also be

read to say that as a matter of law, if FPL (properly) projects that its reserve margin will drop below 20%, the Commission must grant a need determination petition. Such a reading would violate the Commission's fact-finding requirements in section 403.519(3), Florida Statutes, and would undermine the traditional regulatory role of the Commission.

6. For these reasons, ECOSWF moves for reconsideration and clarification of Order No. PSC-15-0540-PCO-EI. ECOSWF asks that the Commission reconsider the order and allow testimony and argument regarding the controlling effect of the 20% reserve margin given FPL's current system reliability and integrity, and clarify that testimony regarding the reliability of FPL's system (beyond whether FPL properly calculated its projected future reserve margin), is appropriate for this proceeding.

7. Counsel for ECOSWF has conferred with counsel for the other parties to this proceeding regarding the relief requested in this motion. SACE supports the motion. FPL opposes the motion. Commission Staff take no position on this motion. FIPUG and OPC do not object to the motion.

Respectfully submitted this 30th day of November, 2015.

/s/ Bradley Marshall
Bradley Marshall
Florida Bar No. 0098008
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, Florida 32301
(850) 681-0031
(850) 681-0020 (facsimile)
bmarshall@earthjustice.org

***Counsel for Intervenor
Environmental Confederation of
Southwest Florida***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on
this 30th day of November, 2015 via electronic mail on:

Kelly Corbari Leslie Ames Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399 kcohari@psc.state.fl.us lames@psc.state.fl.us	Kenneth Hoffman Florida Power & Light Co. 215 South Monroe Street, Suite 810 Tallahassee, FL 32301-1858 ken.hoffman@fpl.com
William P. Cox Florida Power & Light Co. 700 Universe Blvd. Juno Beach, FL 33418 will.cox@fpl.com	Charles Rehwinkel Patricia Christensen Office of Public Counsel The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, FL 32399 Christensen.patty@leg.state.fl.us Rehwinkel.charles@leg.state.fl.us
Jon C. Moyle, Jr. Karen A. Putnal Moyle Law Firm, P.A. 118 North Gadsden St. Tallahassee, FL 32301 jmoyle@moylelaw.com kputnal@moylelaw.com	James Whitlock Gary A. Davis Davis & Whitlock, PC 21 Battery Park Avenue, Suite 206 Ashville, NC 28801 jwhitlock@enviroattorney.com gadavis@enviroattorney.com
George Cavros Southern Alliance for Clean Energy 120 E. Oakland Park Blvd., Suite 105 Fort Lauderdale, FL 33334 George@cavros-law.com	Charles A. Guyton Gunster Law Firm 215 South Monroe Street, Suite 601 Tallahassee, Florida 32101-1804 cguyton@gunster.com

/s/Bradley Marshall
Bradley Marshall, Attorney