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September 1, 2017

-VIA ELECTRONIC FILING-

Ms. Carlotta Stauffer, Commission Clerk
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 20170122-EI - Florida Power & Light Company's Petition to Request Exemption under Rule 25-22.082(18), F.A.C, from Issuing a Request for Proposals for the Modernization of the Lauderdale Plant

Dear Ms. Stauffer:

Please find enclosed for filing a copy of Florida Power & Light Company's ("FPL") response to Sierra Club's motion for leave to file a reply and proposed reply.

Thank you for your assistance. Please contact me should you or your staff have any questions regarding this filing.

Sincerely,

s/ William P. Cox

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WPC/msw
Enclosures

cc: Takira Thompson, Traci Matthews, Phillip Ellis, Division of Engineering
Charles Murphy, Office of the General Counsel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's
Petition to Request Exemption under Rule 25-
22.082(18), F.A.C., from Issuing a Request
for Proposals for the Modernization of the
Lauderdale Plant

Docket No: 20170122-EI

Date: September 1, 2017

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO
SIERRA CLUB'S MOTION FOR LEAVE TO FILE A REPLY AND PROPOSED REPLY**

Pursuant to Rules 28-106.201 and 28-106.204, Florida Administrative Code ("F.A.C."), Florida Power & Light Company ("FPL" or the "Company"), hereby files its response to Sierra Club's August 25, 2017 motion for leave to file a reply ("Motion") and proposed reply to FPL's response to Sierra Club's petition to intervene and protest. Sierra Club protested Proposed Agency Action Order No. PSC-2017-0287-PAA-EI ("PAA Order"), issued by the Florida Public Service Commission ("FPSC" or the "Commission") on July 24, 2017, which approved FPL's request for exemption from a provision in Rule 25-22.082, F.A.C., the "Bid Rule," regarding the need for a Request for Proposals ("RFP") in connection with FPL's proposed modernization of its existing Lauderdale power plant (to be renamed the Dania Beach Clean Energy Center) (the "Project" or "Dania Beach Project"), prior to FPL filing a petition for determination of need for the Project with the Commission.

Based on the Commission's general historical practice of not allowing additional pleadings into a pleading cycle established by rule, and Sierra Club's improper attempt in its proposed reply to rewrite the Commission's Bid Rule and its exemption provision and the need determination statute itself, Section 403.519, Fla. Stat., FPL requests that the Commission deny Sierra Club's Motion as either an out of process reply or an improper motion seeking a rewrite of

the relevant provision of law pertaining to proceedings conducted pursuant to the Power Plant Siting Act (“PPSA”).

I. Background

1. Pursuant to Rule 25-22.082(18), F.A.C., on May 22, 2017, FPL filed a petition with the Commission requesting that FPL be exempted from the RFP requirement in the Bid Rule for FPL’s modernization of the Lauderdale plant. Subsection 18 of the Bid Rule itself provides that the Commission may exempt a utility from any of the requirements of this rule based upon a finding by the Commission that (1) the proposal will likely result in a lower cost supply of electricity to the utility’s general body of ratepayers, *or* (2) will increase the reliable supply of electricity to the utility’s general body of ratepayers, *or* (3) otherwise will serve the public welfare.

2. On July 13, 2017, after considering FPL’s petition, oral comments from the Office of the Public Counsel (“OPC”), and written comments from Sierra Club, the Commission unanimously voted to approve FPL’s petition. On July 24, 2017, the Commission issued the PAA Order granting FPL’s request. The Commission determined that the Dania Beach Project meets all three requirements, any one of which would be sufficient, for exemption under Section 18 of the Bid Rule by reusing the existing Lauderdale plant site and related facilities for a newer, larger, and more efficient unit. The Commission specifically noted in the PAA Order, in direct response to OPC and Sierra Club comments, that “[g]ranteeing the exemption does not relieve the Company of any requirements during a future PPSA [Power Plant Siting Act] need determination process, including a demonstration that the Project is the most cost-effective

source of power or whether conservation or renewable generation can mitigate the need for the modernization of the Lauderdale plant.” PAA Order at 4.

3. On August 14, 2017, Sierra Club filed a protest of the PAA Order and its petition to intervene in the above referenced docket. On August 21, 2017, FPL filed its response to Sierra Club’s protest and petition to intervene, disputing Sierra Club’s contentions and requesting that the Commission hold this docket in abeyance and consolidate it with the Commission’s future docket for the FPL Dania Beach need determination proceeding. On August 25, 2017, Sierra Club filed its Motion stating its concurrence with FPL’s proposed abeyance and docket consolidation, but conditioning that concurrence on a series of requests that would improperly have the Commission seek to rewrite the PPSA and the relevant Commission rules, including the Bid Rule.

II. Legal Argument

A. The Commission should uphold its consistent policy to deny motions for leave to file a reply to avoid an endless pleading cycle and promote administrative efficiency

4. A reply to a response to a motion is not contemplated by the Uniform Rules of Procedure, Rule 28-106.204, F.A.C., or the Commission’s rules without leave granted by the Commission. The Commission has routinely declined to permit a reply and allow an additional pleading into the pleading cycle established by rule in order to avoid a potentially endless filing of “reply” pleadings.¹

¹ See, e.g., *In re: Petition for rate increase by Gulf Power Company*, Docket No. 160186-EI, *In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company*, Docket No. 160170-EI, Order No. PSC-16-0550-PCO-EI (F.P.S.C, Dec. 8, 2016); *In re: Commission review of numeric conservation goals (Florida Power & Light Company)*, Docket No. 130199-EI, *In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.)*, Docket No. 130200-EI, *In re: Commission review of numeric conservation goals (Tampa Electric Company)*, Docket No. 130201-EI, *In re: Commission review of*

5. Sierra Club has provided no justification that would warrant a departure from the Commission's practice of generally not permitting replies to responses to motions under Rule 28-106.204, F.A.C. The Commission should deny this motion and move forward with the orderly and efficient processing of FPL's petition and Sierra Club's petition to intervene and protest.

B. Sierra Club is not entitled to file a reply because FPL has not filed a motion or otherwise requested relief that is distinct from its original request for an exemption from the Bid Rule

6. FPL has filed a response to Sierra Club's petition to intervene and protest and made a procedural request to the Commission for the efficient processing of Sierra Club's petition to intervene and protest, which is that the Commission hold this Bid Rule exemption docket in abeyance and consolidate it with FPL's future need determination filing for the Dania Beach Project. This request is consistent with the Commission's PAA Order that the "granting of the exemption does not relieve FPL of any requirements in a future PPSA need determination."

numeric conservation goals (Gulf Power Company), Docket No. 130202-EI, In re: Commission review of numeric conservation goals (JEA), Docket No. 130203-EM, In re: Commission review of numeric conservation goals (Orlando Utilities Commission), Docket No. 130204-EM, In re: Commission review of numeric conservation goals (Florida Public Utilities Company), Docket No. 130205-EI, Order No. PSC-14-0329-PCO-EU (F.P.S.C., June 25, 2014); In re: Commission review of numeric conservation goals (Florida Power & Light Company), Docket No. 130199-EI, In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.), Docket No. 130200-EI, In re: Commission review of numeric conservation goals (Tampa Electric Company), Docket No. 130201-EI, In re: Commission review of numeric conservation goals (Gulf Power Company), Docket No. 130202-EI, In re: Commission review of numeric conservation goals (JEA), Docket No. 130203-EM, In re: Commission review of numeric conservation goals (Orlando Utilities Commission), Docket No. 130204-EM, In re: Commission review of numeric conservation goals (Florida Public Utilities Company), Docket No. 130205-EI, Order No. PSC-14-0189-PCO-EU (F.P.S.C., April 22, 2014); In Re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee, Docket No. 060635-EU, Order No. PSC-07-0032-PCO-EU (F.P.S.C., Jan. 9, 2007); In Re: Application for a Rate Increase in Citrus, Martin, Marion, and Charlotte/Lee Counties by Southern States Utilities, Inc.; in Collier County by Marco Island Utilities (Deltona) and Marco Shores Utilities (Deltona); in Marion County by Marion Oaks Utilities (United Florida); and in Washington County by Sunny Hills Utilities (United Florida), Docket No. 900329-WS, Order No. 25122, (F.P.S.C., Sept. 26, 1991).

7. FPL is not seeking any new or additional relief from what it submitted in its petition for exemption from the RFP requirement in the Bid Rule, filed on May 22, 2017, nor is it requesting the ultimate relief it will seek in its upcoming need determination petition for the Dania Beach Project. Likewise, FPL has not filed a motion to dismiss Sierra Club's protest or deny its petition to intervene or any other type of motion requesting relief from the Commission.

8. Contrary to FPL's response, Sierra Club's proposed reply actually presents new requests and conditions that are neither supported by the Bid Rule nor the need determination statute. FPL's response still seeks the same relief it has been seeking since it filed its May 22, 2017 petition, which is an exemption from the Bid Rule requirement to issue an RFP that the Commission approved in its PAA order. Accordingly, Sierra Club has provided no justification for granting its motion for leave to file a reply to FPL's response.

C. Sierra Club is attempting to interject a Commission-run RFP into the Commission's Bid Rule exemption and need determination review processes that is not provided for in Section 403.519 or the Commission's rules

9. Sierra Club suggests in its proposed reply an entirely new set of procedures and standards for the Bid Rule and its exemption provision and the Section 403.519 need determination process that fundamentally depart from the requirements of the rule and statute. Sierra Club seeks a new bifurcated need determination process. First, FPL would file its need determination petition and establish and substantiate the specific need at issue (and presumably the Commission would determine a need for the Project proposed). Second, the Commission would seek submissions of supply-side and demand-side alternatives to the needed Project and would toll the statutory need determination process time limit while the proposed RFP process is completed. In addition, FPL would not make any irreversible commitment of resources or otherwise prejudice the Commission's review of the most cost effective alternative and the

remedy sought by Sierra Club. This proposal has no basis in Sec. 403.519, F.S., and would exceed the statutory time limit for processing a need determination under that statute.

10. Sierra Club's proposed reply represents a clear departure from the Bid Rule and its exemption provision and should be rejected. The Bid Rule (Rule 25-17.082(3), F.A.C.) requires that prior to a utility seeking a need determination under Section 403.519, it must evaluate supply-side alternatives to its proposed self-build project by issuing an RFP or, if specific criteria in the Bid Rule are satisfied, seek an exemption from this RFP requirement (Rule 25-22082(18), F.A.C.). The Bid Rule does not instruct FPL, as advocated by Sierra Club, to seek a need determination, then have the Commission solicit supply-side **and demand-side proposals**, and then seek a Bid Rule exemption if FPL wants to construct the winning proposal itself.

11. Thus, Sierra Club is attempting to rewrite the Commission's rule and the Legislature's statute, Section 403.519. This attempt should be rejected out of hand by the Commission, as neither the rule nor the statute proscribe or otherwise permit the bifurcated process for which Sierra Club advocates. The traditional RFP that was the subject of FPL's Bid Rule exemption would in effect be conducted by the Commission under Sierra Club's proposal during the need determination proceeding, rendering the RFP exemption provision in the Bid Rule meaningless. Sierra Club's proposed Bid Rule process would actually promote the inefficient use of utility and Commission resources and simply has no basis for approval under the Bid Rule or the need determination statute.

12. Lastly, Sierra Club implies that somehow the Commission will be prejudiced in meeting its statutory obligation under Section 403.519 to consider whether the Dania Beach Project is the most cost-effective alternative because of some action by FPL, including "making

irreversible commitments of resources.” Even if such an allegation was FPL’s intent, which it most certainly is not, FPL could not do so because it cannot construct and operate the proposed Dania Beach Project without (1) first obtaining an affirmative determination of need from the Commission, in which process the Commission considers cost-effectiveness, among other factors, and (2) without also obtaining site certification for the Project from the Siting Board. Further, even if the Commission denies Sierra Club’s PAA Order protest and ultimately grants and confirms the requested Bid Rule exemption, nothing prohibits Sierra Club or any party from contesting FPL’s need determination petition and whether the proposed Project is the most cost-effective alternative. The Commission acknowledged this fact in the PAA Order when it recognized that FPL is not relieved from any requirements under the PPSA need determination process. PAA Order at 4.

WHEREFORE, for the foregoing reasons, Florida Power & Light Company respectfully requests that the Commission deny Sierra Club’s motion for leave to file a reply.

DATED this 1st day of September, 2017.

Respectfully submitted,

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By: s/ William P. Cox

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CERTIFICATE OF SERVICE
Docket No. 20170122-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 1st day of September, 2017 to the following:

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