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From: Jessica_Cano@fpl.com
Sent: Thursday, June 12, 2008 2:06 PM
To: Filings@psc.state.fl.us
Cc: Martha Brown; PBCEnviroCoalition@gmail.com
Subject: Electronic Filing for Docket Nos. 080203-EI, 080245-EI & 080246-EI / FPL's Response in Opposition to Request for Intervention of Panagioti Tsolkas
Attachments: FPL's Response in Opposition to Request for Intervention of Panagioti Tsolkas.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket Nos. 080203-EI, 080245-EI & 080246-EI

In re: Florida Power & Light Company's
Petition to Determine Need for West County
Energy Center Unit 3 Electrical Power Plant

In re: Florida Power & Light Company's
Petition to Determine Need for Conversion of Riviera Plant

In re: Florida Power & Light Company's
Petition to Determine Need for Conversion of Cape Canaveral Plant

c. Documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of 8 pages in the attached document.

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to Request for Intervention of Panagioti Tsolkas.

(See attached file: FPL's Response in Opposition to Request for Intervention of Panagioti Tsolkas.doc)

Sincerely,

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6/12/2008

DOCUMENT NUMBER-DATE

05027 JUN 12 08

FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's)	Docket No. 080203-EI
Petition to Determine Need for West County)	
Energy Center Unit 3 Electrical Power Plant)	
)	
In re: Florida Power & Light Company's)	Docket No. 080245-EI
Petition to Determine Need for Conversion of)	
Riviera Plant)	
)	
In re: Florida Power & Light Company's)	Docket No. 080246-EI
Petition to Determine Need for Conversion of)	
Cape Canaveral Plant)	
)	Filed: June 12, 2008

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE IN OPPOSITION TO REQUEST
FOR INTERVENTION OF PANAGIOTI TSOLKAS**

Florida Power & Light Company ("FPL") respectfully responds in opposition to the request for intervention of Panagioti Tsolkas ("Tsolkas"), as an individual, and representing the Palm Beach County Environmental Coalition ("PBCEC"), and states as follows.

Background and Summary

On June 10, 2008, Mr. Tsolkas filed a request for intervention as an individual and seeking to represent PBCEC in the above-captioned matters. Mr. Tsolkas resides in Lake Worth, Florida, where he is a customer of the Lake Worth municipal utility, not of FPL. The intervention request does not identify any members of PBCEC who are customers of FPL. The petition requests that communications be provided to Mr. Tsolkas and PBCEC at a Lake Worth address not served by FPL. The intervention request does not allege that PBCEC is a customer of FPL. FPL has also reviewed its customer records and determined that PBCEC does not appear as a customer of FPL.

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FPSC-COMMISSION CLERK

The intervention request should be denied for several reasons. First, under Florida law, the request for intervention does not allege any facts entitling Mr. Tsolkas or PBCEC to intervene in this proceeding. Although the Commission from time to time has permitted individual customers of a utility (and sometimes groups) to intervene in proceedings involving the utility serving them, in this case the intervention request does not identify even one FPL customer. Therefore, even under the more relaxed approach that the Commission sometimes has applied, neither Mr. Tsolkas nor PBCEC have alleged sufficient facts upon which intervention may be granted. Second, PBCEC is not even a legal entity with the capacity to maintain or intervene in a legal action. Third, even if PBCEC was a legal entity under Florida law (it is not), Mr. Tsolkas is not entitled to appear and represent PBCEC because he is not an attorney or “qualified representative” as required by Commission rules.

This is not to say that the views of Mr. Tsolkas individually or as a member of PBCEC cannot be heard by the Commission in this proceeding. On the contrary, the correct avenue for such participation has been expressly provided for by the Commission. In its Notice of Commission Hearing and Prehearing issued on May 27, 2008, the Commission stated:

Members of the public who are not parties to these need determination proceedings will have an opportunity to present testimony regarding the need for the proposed plants. All members of the public who wish to offer testimony should be present at the beginning of the hearing, 9:30 a.m., Monday, June 23, 2008. All witnesses will be sworn in and will be subject to cross-examination at the conclusion of their testimony.

Notice of Commission Hearing and Prehearing, May 27, 2008, p. 3. This is the appropriate method of public participation where, as here, an individual or group is not properly a party to the proceeding.

Argument

A. **Mr. Tsoikas Fails to Allege an Adequate Basis for Intervention**

The applicable standards for intervention are provided in Section 120.52(12) (b), Fla. Stat. and Rule 25-22.039, Fla. Admin. Code. Rule 25-22.039 states in relevant part:

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 include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceedings as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected though the proceeding.

Review of the intervention request shows that it contains (i) no allegation by Mr. Tsoikas of an entitlement to intervene based upon any constitutional or statutory right or Commission rule; and (ii) no attempt to mention any “substantial interest” of Mr. Tsoikas entitled to protection in this proceeding. Absent such a showing, intervention should be denied.

Florida law provides a two-prong test for determining whether a party has a “substantial interest” entitling the party to intervene in a proceeding. Under it Mr. Tsoikas must “...show 1) that he will suffer an injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.” *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981).

The few facts alleged in the petition, far from demonstrating a substantial interest, instead prove the opposite. Far from showing an injury in fact and that it is within the scope of protection of this case, Mr. Tsoikas’s only allegation relating to his interest is that “I am a ratepayer of a municipal utility which has financial relations with FPL.” Tsoikas Petition at ¶1.

Saying that one is a customer of a municipal utility that does business with FPL obviously does not satisfy the requirement that Mr. Tsoikas allege that he is at risk of suffering an injury in fact of sufficient immediacy to entitle him to a hearing, or that such injury is of a substantial nature which this need determination proceeding is designed to protect. Having utterly failed to satisfy even one prong much less both prongs of the required two-part *Agrico* test, it is clear that Mr. Tsoikas has no legal right to intervene in the present proceeding.

The Commission sometimes takes a more relaxed approach by permitting intervention of a customer in the proceedings of a utility that serves the customer. However, Mr. Tsoikas would not be permitted to intervene under this more relaxed approach, because he is not even a customer of FPL. For all of these reasons, Mr. Tsoikas's request for intervention as an individual should be denied.

B. PBCEC Lacks Legal Capacity to Intervene and Fails to Allege a Proper Basis for Standing

PBCEC is not a legal entity with the capacity to participate in this proceeding. PBCEC's request for intervention states that "PBCEC is comprised of participants." Tsoikas Petition at ¶1. Only certain groups of individuals are recognized by Florida law as a legal entity distinct from its members. A partnership, for example, does not have the legal capacity to sue or defend in its own name. See, e.g., *DeToro v. Dervan Invs. Ltd. Corp.*, 483, So. 2d 717 (Fla. 4th DCA 1985). Nonprofit corporations organized under the laws of Florida are affirmatively granted that ability to appear in proceedings in its corporate name. Section 617.0302, Fla. Stat. No other Florida statute confers legal capacity on an unincorporated organization such as PBCEC. A review of the records of the Florida Department of State, Division of Corporations, indicates that PBCEC does not currently hold a valid certificate of status, nor does PBCEC even allege in its request to intervene that it has such a status. Accordingly, it is not a nonprofit corporation recognized in

the state of Florida and does not have the capacity to intervene. See *In re: Petition to Determine Need for Polk Unit 6 Electrical Power Plant by Tampa Electric Power Company*, Docket No. 070467-EI, Order No. PSC-07-0695-PCI-EI, 2007 WL 2417278 (Fla. P.S.C.) (conditioning intervention of organization upon the filing of proof that it has a valid certificate issued by the Department of State).

Even if PBCEC had the legal capacity to intervene, which it does not, it has failed to establish associational standing to intervene. The test for associational standing, which was established in *Florida Home Builders v. Dept. of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982) and *Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services*, 417 So. 2d 753 (Fla. 1st DCA 1982), is also based on the standing principles established in *Agrico*. Associational standing may be found where: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members. *In re Petition to Determine Need for Polk Unit 6 Electrical Power Plant by Tampa Electric Power Company*, Docket No. 070467-EI, Order No. PSC-07-0695-PCI-EI, 2007 WL 2417278 (Fla. P.S.C.).

Applying this standard to the intervention request, it is clear that no facts are alleged that would entitle PBCEC to standing. First, the intervention request is absolutely silent as to even how many association members there are in PBCEC, and there is no effort to allege facts showing how any of its members may be substantially affected by the Commission's decision in this proceeding. Second, there is no description at all in the intervention request as to PBCEC's general scope of interest and activity. Given the failure to plead either of these first two

elements, it is no surprise that the intervention request fails to demonstrate the third element - that the relief requested is of a type appropriate for the PBCEC to receive. Accordingly, intervention by PBCEC should be denied.

In summary, PBCEC is not a legal entity entitled to appear or intervene in this or any legal proceeding. In addition, the intervention request fails to provide the Commission any factual basis upon which it can find that the two prong standing test in *Agrico*, and the three prong association standing test established in *Florida Home Builders*, have been satisfied. Moreover, the intervention request's speculative assertion that some PBCEC participants live in an area "predominated by FPL ratepayers" falls far short of even the relaxed approach that the Commission has sometimes applied to identifiable customer groups. Accordingly, the request for intervention should be denied.

C. Mr. Tsoikas is Not Entitled to Represent PBCEC

The Commission's rules require that a party be represented by an attorney or a "qualified representative." Rule 28-106.106(1). Mr. Tsoikas is not an attorney, and has not made the required filing of qualifications for consideration to become a "qualified representative." Rule 106.106(2)(a). Accordingly, Mr. Tsoikas is not entitled to represent PBCEC before the Commission in this proceeding.

Mr. Tsoikas's freedom to express disagreement with the development of West County Energy Center or the construction of any power plants will not be hindered by denying intervention status in the technical hearing in this proceeding. Even without being granted intervention, Mr. Tsoikas is fully entitled to appear, be sworn, and participate in the public hearing scheduled for 9:30 a.m. on June 23, 2008 that precedes the opening of the record for the technical hearing.

Conclusion

WHEREFORE, for all of the foregoing reasons, FPL respectfully requests that the Commission deny the request for intervention filed by Panagioti Tsoikas, as an individual, and representing the Palm Beach County Environmental Coalition.

Respectfully submitted this 12th day of June, 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and by United States Mail this 12th day of June 2008, to the following:

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