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January 16, 2018

**-VIA ELECTRONIC FILING-**

Ms. Carlotta S. Stauffer  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 20170225-EI  
In re: Petition for Determination of Need for Dania Beach Clean Energy Center  
Unit 7, by Florida Power & Light Company

Dear Ms. Stauffer:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") is FPL's  
Objection to Sierra Club's Notice of Intent to Seek Official Recognition.

Please contact me should you or your Staff have any questions regarding this filing.

Sincerely,

s/ William P. Cox  
William P. Cox  
Senior Attorney

cc: Counsel for Parties of Record (w/encl.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's  
Petition for Determination of Need for Dania  
Beach Clean Energy Center Unit No. 7.

DOCKET NO. 20170225-EI

Filed: January 16, 2018

**FLORIDA POWER & LIGHT COMPANY'S OBJECTION TO SIERRA CLUB'S  
NOTICE OF INTENT TO SEEK OFFICIAL RECOGNITION**

Pursuant to Section 120.569(2)(i), Fla. Stat., and the Order Establishing in this docket, Order No. PSC-2017-0426-PCO-EI ("OEP"), Florida Power & Light Company ("FPL" or the "Company"), objects to the notice of intent to seek official recognition filed by Sierra Club on January 12, 2017. All documents for which Sierra Club intends to seek official recognition are either not relevant to the issues in this proceeding or otherwise not appropriate for the Commission to officially recognize pursuant to Section 90.202 of the Florida Evidence Code, which is the Florida legal standard for judicial notice that the Commission has employed for purposes of official recognition under Chapter 120.<sup>1</sup> Official recognition is not intended to be a mechanism by which a party can attempt to introduce evidence without a sponsoring witness.

**I. Exhibit A – City of Sarasota Resolution**

1. FPL objects to Sierra Club's intended request for official recognition of Exhibit A, as it is not relevant to any issue before the Commission in this proceeding. The City of Sarasota's decision to pass a municipal resolution to move toward 100% zero emission renewable energy for its municipal operations by 2030 has no direct bearing on the Commission's decision on the issues in this need determination proceeding for the Dania Beach

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<sup>1</sup> See, e.g., *In Re: Complaint of Consolidated Minerals, Inc. v. Florida Power and Light Company for Failure to Negotiate Cogeneration Contract*, Docket No. 911103-EI, Order No. PSC-92-0076-PCO-EI (F.P.S.C., March 18, 1992).

Clean Energy Center Unit 7. Accordingly, the Commission should exercise its discretion not to take official recognition of Exhibit A.

## **II. Exhibit B – California Public Utilities Commission Draft Resolution**

2. FPL objects to Sierra Club’s intended request for official recognition of Exhibit B because the “draft” resolution from the California Public Utilities Commission is not relevant to any issue in this need determination proceeding for the Dania Beach Clean Energy Center Unit 7 and is not an official act or decision of a state agency that would qualify for official recognition pursuant to Section 90.202 of the Florida Evidence Code. The document provided as Exhibit B is a draft resolution and does not constitute a final official act or decision of a state agency for which Sierra Club can seek official recognition under Section 90.202(5),<sup>2</sup> and its subject matter, a request for proposals for a California electric utility for energy storage to replace existing peaking generation units in California, is not relevant to or reasonably likely to lead to admissible evidence for any issue in this proceeding.

## **III. Exhibits C and D – NERC Special Assessment Reports**

3. Exhibit C. FPL objects to Sierra Club’s intended request for official recognition of Exhibit C because it is an assessment report of the National Electric Reliability Corporation (“NERC”)<sup>3</sup> that does not qualify for official recognition pursuant to Section 90.202 of the Florida Evidence Code. This report provides recommendations from NERC to various stakeholders and is not an official action of NERC or otherwise represents regulatory

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<sup>2</sup> See, e.g., *Johns v. State*, 144 Fla. 256, 197 So. 791, 794 (1940) (Florida Governor executive orders); *Cherry Lake Farms v. Love*, 129 Fla. 469, 176 So. 486, 487 (1937) (public records in the Secretary of State’s office); *Amos v. Moseley*, 74 Fla. 555, 77 So. 619, 622 (1917) (Florida Senate and House legislative journals); *The Florida Bar v. D’Ambrosio*, 25 So. 3d 1209, 1215 (Fla. 2009) (Illinois rules relating to the unlicensed practice of law.); *Wencel v. State*, 915 So. 2d 1270, 1271 (Fla. 4th DCA 2005) (parole commission order); *Jacksonville Elec. Authority v. Department of Revenue*, 486 So. 2d 1350, 1354 (Fla. 1st DCA 1986) (Florida Senate and House legislative journals).

<sup>3</sup> NERC is a not-for-profit corporation and an international regulatory authority under the oversight of the Federal Energy Regulatory Commission (“FERC”). See About NERC at <http://www.nerc.com/AboutNERC/Pages/default.aspx>, viewed on January 14, 2018.

requirements or an official United States government action or decision.<sup>4</sup> Moreover, this report does not address Florida or the applicable Regional Entity with delegated authority from NERC, the Florida Reliability Coordinating Council (“FRCC”).

4. Exhibit D. For similar reasons to Exhibit C above, FPL objects to Sierra Club’s intended request to seek official recognition of Exhibit D because the document is an assessment report of NERC that does not qualify for official recognition pursuant to Section 90.202 of the Florida Evidence Code. This report is not an official action of NERC, but instead an analysis and report with recommendations for future action.

#### **IV. Exhibits E, F, and G – NREL Technical Reports**

5. Exhibit E. FPL objects to Sierra Club’s intended request for official recognition of Exhibit E because it is a technical report from the National Renewable Energy Laboratory (“NREL”)<sup>5</sup> and does not qualify for official recognition pursuant to Section 90.202 of the Florida Evidence Code. This report is a technical report by various authors that includes an express notice and disclaimer of the report’s accuracy, completeness, and usefulness. This notice makes it clear that it does not necessarily reflect or state opinions or views of the U.S. government. The report also calls for further research and analysis from NREL in its recommendations and findings and is not an official action or otherwise does not represent a regulatory requirement or rule or official U.S. government agency action under Section 90.202(5).<sup>6</sup> Further, Page 3 of the report indicates the primary data source for the report is California’s Net Energy Metering

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<sup>4</sup> See *In re: Joint petition to determine need for Gainesville Renewable Energy Center in Alachua County, by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC*, Docket No. 090451-EM, Order No. PSC-10-0310-PCO-EM (F.P.S.C., May 13, 2010) (denying intervenors requests for official recognition of reports of local government agency) (“*GRU Petition*”).

<sup>5</sup> As explained on the cover page of the report, NREL is a national laboratory of the U.S. Department of Energy Office of Energy Efficiency & Renewable Energy operated by the Alliance of Sustainable Energy, LLC.

<sup>6</sup> See *GRU Petition*, supra.

Applications Data Set, which would not include solar development and cost information for Florida, and other benchmarking information provided in the report is from locations outside of Florida or the southeastern United States.

6. Exhibit F. For similar reasons to Exhibit E above, FPL objects to Sierra Club's intended request for official recognition of Exhibit F because it a NREL technical report by various authors, including the California Independent System Operator and private company First Solar, on the findings and future plan from a demonstration project. It also includes an express notice and disclaimer of its accuracy, completeness, and usefulness and makes it clear that it does not necessarily reflect or state opinions or views of the U.S government. It is not an official action by the U.S. government that would be appropriate for official recognition pursuant to Section 90.202(5) of the Florida Evidence Code.

7. Exhibit G. For similar reasons to Exhibits E and F above, FPL objects to Sierra Club's intended request for official recognition of Exhibit G because it a NREL technical report by various authors. It too includes an express notice and disclaimer of its accuracy, completeness, and usefulness and makes it clear that it does not necessarily reflect or state opinions or views of the U.S. government. It is not an official action by the U.S. government that qualifies for official recognition pursuant to Section 90.202(5) of the Florida Evidence Code.

Based upon the foregoing, FPL seeks an order denying Sierra Club's intended request for official recognition of the documents provided with the Notice and any other relief this Commission deems just and proper.

**WHEREFORE**, for the foregoing reasons, Florida Power & Light Company objects to Sierra Club's Notice of Intent to Request Official Recognition and asks the Commission to deny Sierra Club's intended request.

**DATED** this 16<sup>th</sup> day of January, 2018.

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By:  /s William P. Cox

William P. Cox  
Fla. Bar No. 0093531

**CERTIFICATE OF SERVICE  
DOCKET NO. 20170225-EI**

I HEREBY CERTIFY that a true and correct copy of FPL's First Set of Interrogatories was served by electronic delivery this 16th day of January, 2018 to the following:

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By: s/ William P. Cox

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