

ORIGINAL

**Matilda Sanders**

From: Jamie\_Patterson@fpl.com  
 Sent: Friday, March 09, 2007 3:31 PM  
 To: Filings@psc.state.fl.us; mgross@earthjustice.org; Harold Mclean; Jennifer Brubaker; Lorena Holley; Charles Beck  
 Cc: Wade\_Litchfield@fpl.com; Natalie\_Smith@fpl.com; Bill\_Walker@fpl.com; Anne\_M\_Grealy@fpl.com; Sabrina\_Spradley@fpl.com; Bryan\_Anderson@fpl.com; Kim\_Johnston@fpl.com; Nanci\_Nesmith@fpl.com; Lynne\_Adams@fpl.com; Ery\_Martin@fpl.com  
 Subject: FPL's Response to Earthjustice's Petition to Intervene  
 Importance: High  
 Attachments: FPL's Response to EarthJustice's Petition to Intervene.pdf



FPL's  
Response to EarthJu

Electronic Filing

a. Person responsible for this electronic filing:

Natalie F. Smith, Attorney  
 Florida Power & Light Company  
 700 Universe Blvd.  
 Juno Beach, FL 33408  
 (561) 691-7207  
 natalie\_smith@fpl.com

b. Docket No.: 070098-EI

c. Document being filed on behalf of Florida Power & Light Company: FPL's Response to Earthjustice's Petition to Intervene

d. There are 5 pages.

e. The document attached for electronic filing is:

(See attached file: FPL's Response to EarthJustice's Petition to Intervene.pdf)

Thank you for your attention and cooperation to this request.

Thank you,  
 Jamie Patterson, Legal Assistant  
 Bryan Anderson, Esq.  
 Garson Knapp, Esq.  
 Natalie F. Smith, Esq.  
 office: (561) 691-7724 (direct line) fax: (561) 691-7135  
 email: jamie\_patterson@fpl.com

THIS IS A PRIVATE, CONFIDENTIAL COMMUNICATION

The information contained in this email is private and confidential information intended only for the use of the individual or entity named above as addressee. If the recipient is not the intended recipient or the employee or the agent responsible for delivering the email to the intended recipient, you are hereby notified that any dissemination or copying of this information is strictly prohibited. If you have received this email in error please contact us immediately at (561) 691-7724.

DOCUMENT NUMBER - DATE  
 02163 MAR -96  
 FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's ) Docket No. 070098-EI  
Petition to Determine Need for FPL Glades )  
Power Park Units 1 and 2 Electrical Power Plant ) Dated: March 9, 2007

**FLORIDA POWER & LIGHT COMPANY'S  
RESPONSE TO PETITION TO INTERVENE**

**NOW, BEFORE THIS COMMISSION**, through undersigned counsel, comes Florida Power & Light Company ("FPL" or the "Company"), and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response to the Petition to Intervene ("Petition to Intervene") filed March 5, 2007 on behalf of the Sierra Club, Inc. ("Sierra Club"), Save Our Creeks ("SOC"), Florida Wildlife Federation ("FWF"), Environmental Confederation of Southwest Florida ("ECOSWF"), and Ellen Peterson (collectively the "Intervenors"), and in support states:

1. FPL does not object to the Intervenors' participation as a party in Docket No. 070098-EI. However, the Commission should expressly limit Intervenors' participation in this docket to litigation of issues that are PSC jurisdictional, recognizing that other state agencies have jurisdiction over environmental, land use and other aspects of reviewing and approving the project.

2. As the Intervenors are aware, under the Florida Electrical Power Plant Siting Act, the Commission is just one agency that has jurisdiction over certain aspects of the siting of an electrical power plant in Florida. See Sections 403.501 – 403.519, Florida Statutes (2006). Specifically, under Section 403.519(1), the Legislature directs the Commission to "determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act." Other state and local agencies and governmental bodies vested with jurisdiction over other

aspects of siting the FGPP electrical power plant include the Florida Department of Environmental Protection (“FDEP”), the Florida Department of Community Affairs, the South Florida Water Management District, the Florida Department of Transportation (“FDOT”), and Glades County. *See* Section 403.507, Florida Statutes (2006). The Commission’s determination of need in accordance with Section 403.519 is a condition precedent to issuance of FDEP’s project analysis and conduct of the plant site certification hearing. *See id.* Section 403.507(4).

3. This need determination proceeding is not the appropriate context in which to hear non-jurisdictional issues, especially where such issues are appropriately subject to debate in the context of the land use and certification proceedings. The Intervenors, with the exception of Sierra Club, are each parties to the land use and certification proceedings pending at the Florida Division of Administrative Hearings, and they are able to raise non-PSC jurisdictional issues within the context of those proceedings. *See* DOAH Case No. 06-005334EPP, OCG Case No. 06-2649.

4. In particular, with respect to the intervention of customer Ellen Peterson, who is also a party to the land use and certification proceedings, the Petition to Intervene states that Ms. Peterson is a customer of FPL who owns property “less than a half a mile from the rail line that would have a daily one and a quarter mile long coal train running to the proposed power plant.” Petition to Intervene, ¶ 10. Ms. Peterson’s interests as a landowner are not within the zone of interests this proceeding is designed to address. Therefore, in ruling on the Petition to Intervene, the Commission should expressly limit Ms. Peterson’s intervention in this PSC proceeding to her substantial interests as a customer of FPL. *See Agrico Chemical Co. v. Dep’t of Env’tl. Reg.*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). Land use and related issues associated with rail traffic to

the FGPP plant site, if appropriately raised, would be addressed by FDOT and any other agencies with subject matter jurisdiction.

5. Further, FPL, notes that several of the “Disputed Issues of Fact” raised by Intervenors in the Petition to Intervene are vague, redundant, and misstatements of the criteria for the Commission’s consideration as enumerated in Section 403.519, Florida Statutes (2006). For example, contrary to the Intervenors assertion, whether the FGPP electrical power plant is the “lowest risk alternative to provide capacity needed in the area that will be served by the proposed plants” is not the appropriate issue for the Commission’s consideration. Petition to Intervene ¶ 18. Rather, in determining the need for the plant, the Legislature directs the Commission to “take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, and whether the proposed plant is the most cost-effective alternative available.” *See* Section 403.519(3), Florida Statutes (2006). Also, the question of whether DSM measures are “adequately valued” has already been decided by the Commission and should not be revisited in the context of a particular utility’s need determination proceeding. Petition to Intervene ¶ 20. Rather, in the context of a need determination, the Commission is directed to “expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant.” *See* Section 403.519(3), Florida Statutes (2006). FPL will submit its proposed preliminary issues list to the Commission on March 12, 2007.

6. Intervenors take the case as they find it. *See* Rule 25-22.039, Florida Administrative Code (2006).

**WHEREFORE**, for the above and foregoing reasons, Florida Power & Light Company responds to the Petition to Intervene filed on behalf of the Sierra Club, Inc., Save Our Creeks, Florida Wildlife Federation, Environmental Confederation of Southwest Florida, and Ellen Peterson and requests that their intervention be subject to the conditions set forth above and such other conditions as the Commission may deem appropriate.

Respectfully submitted this 9th day of March, 2007.

R. Wade Litchfield  
Associate General Counsel  
Bryan S. Anderson  
Natalie F. Smith  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Telephone: (561) 691-7207  
Facsimile: (561) 691-7135

By: s/Natalie F. Smith  
Natalie F. Smith  
Florida Bar No. 470200

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Response to Petition to Intervene has been furnished electronically and by United States Mail this 9th day of March, 2007, to the following:

Katherine E. Fleming, Esquire  
Jennifer Brubaker, Esquire  
Lorena Holley, Esquire  
Florida Public Service Commission  
Division of Legal Services  
Gerald L. Gunther Building  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Michael Gross, Esquire \*\*  
Attorney for The Sierra Club, Inc., et al  
c/o The Florida Legislature  
111 S. Martin Luther King Jr. Blvd.  
Tallahassee, FL 32301

Office of Public Counsel  
Charles J. Beck, Esquire  
Deputy Public Counsel  
c/o The Florida Legislature  
111 W. Madison St., Room 812  
Tallahassee, FL 32399-1400  
Black & Veatch \*  
Myron Rollins  
11401 Lamar Avenue  
Overland Park, KS 66211

Office of Public Counsel  
c/o Harold McLean  
111 W. Madison St., #812  
Tallahassee, FL 32399-1400

Department of Community Affairs \*  
Valerie Hubbard, Director  
Division of Community Planning  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

Department of Environmental Protection \*  
Michael P. Halpin  
Siting Coordination Office  
2600 Blairstone Road MS 48  
Tallahassee, FL 32301

By: s/Natalie F. Smith  
Natalie F. Smith  
Fla. Bar No.: 0470200

- <sup>1</sup> Electronic version only, all others sent via U.S. Mail.
- \* Indicates interested party
- \*\* Indicates not an official party of record as of the date of this filing.