

ORIGINAL

Matthew M. Childs, P.A.

December 1, 2000

Ms. Blanca S. Bayó, Director
Division of Records and Recordings
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 000007-EI

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Dear Ms. Bayó:

Enclosed please find the original and seven (7) copies of Florida Power & Light Company's Response in Opposition to Colonial Pipeline Company's Petition to Intervene in the above referenced docket.

Very truly yours,

Matthew M. Childs, P.A.

MMC:acw

CC: Parties of Record

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15375 DEC-18

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In Re: Review of Florida Power & Light)
Company's proposed merger with Entergy)
Corporation, the formation of a Florida)
transmission company ("Florida transco"),)
and their effect on FPL's retail rates.)
_____)

DOCKET NO. 001148-EI

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE IN OPPOSITION TO
COLONIAL PIPELINE COMPANY'S
PETITION TO INTERVENE**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby respectfully submits this response in opposition to the petition to intervene that was filed by Colonial Pipeline Company ("Colonial") in this proceeding, and in support thereof states the following:

1. Rule 28-106.205, F.A.C., requires that a petition to intervene in a Commission proceeding contain allegations sufficient to demonstrate that the person seeking intervention is entitled to participate in the proceeding, either as a matter of constitutional or statutory right or pursuant to Commission rule, or because the person's substantial interests are subject to determination or will be affected by the proceeding. Colonial does not allege, nor could it, that it has a constitutional, statutory or regulatory right to intervene. Therefore, in order to demonstrate that it is entitled to intervene, Colonial's petition would have to contain allegations sufficient to demonstrate that its substantial interests will be affected. Colonial's petition contains no such

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allegations and, instead, the petition clearly shows that Colonial has no interests that would warrant intervention in this proceeding.

2. To demonstrate standing to intervene under the “substantial interest” test, a potential intervener must show that (a) it will suffer injury in fact as a result of the agency action contemplated in the proceeding that is of sufficient immediacy to entitle it to a hearing, and (b) the injury suffered is a type against which the proceeding is designed to protect. *Ameristeel Corp. v. Clark*, 691 So.2d 473, 477 (Fla. 1997) (quoting *Agrico Chemical Co. v. Dep’t of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981)). Mere economic losses due to increased competition are not of sufficient immediacy to warrant intervention. *Florida Soc’y of Ophthalmology v. State Board of Optometry*, 532 So.2d 1279, 1285 (Fla. 1st DCA 1988). And speculation on the potential occurrence of injurious events fails to meet the “injury in fact” requirement. *Village Park Mobile Home Ass’n, Inc. v. State, Dep’t of Bus. Regulation*, 506 So.2d 426, 434 (Fla. 1st DCA 1987).

3. This proceeding was initiated by the Commission to

consider the effect on FPL’s retail rates of: 1) the planned formation of a regional transmission organization for peninsular Florida; and 2) FPL’s planned merger with Entergy Corporation.

Order Establishing Procedure, No. PSC-00-2105-PCO-EI, issued November 6, 2000 (emphasis added). The stated scope of the proceeding is consistent with the Commission’s regulatory authority over FPL’s retail electric utility business. The Commission has not undertaken, nor could it properly undertake, an investigation into impacts on other aspects of FPL’s and its affiliates’ business that do not concern retail rates.

4. Colonial's petition to intervene focuses on its alleged interests in FPL's planned merger with Entergy. But none of those alleged interests falls remotely within the scope of the Commission's investigation.¹

5. The Colonial petition alleges that the combined FPL-Entergy system will be a large customer for natural gas and a large marketer of electricity and natural gas. Colonial petition at ¶2. It alleges that Colonial is a large electricity customer in several states other than Florida,² and that Colonial transports a variety of refined petroleum products to customers in the Southeastern and Eastern United States. *Id.* at ¶4. It alleges that the planned FPL-Entergy merger could affect market power and competition in Florida and nearby geographic markets where the Colonial pipeline operates. *Id.* at ¶5. Finally, it alleges that other public utility commissions are reviewing the planned merger and that this proceeding could affect those reviews. *Id.* at ¶¶3 and 5.

6. Reduced to their essence, these allegations express concern that a combined FPL-Entergy entity could affect the price that Colonial pays for electricity outside of FPL's service territory and could affect Colonial's markets for natural gas, including the competitiveness of those markets. Even if those allegations were true, the concerns they express are not the subject of this

¹ Even if Colonial could allege an interest that is within the scope of the Commission's investigation, FPL questions whether intervention would be appropriate. As discussed above, *Agrico* requires that a party who is seeking to intervene allege that it will suffer "injury in fact" from contemplated agency action. Mere speculation as to the potential occurrence of such an injury is insufficient. This proceeding is an investigation, designed to inform the Commission about the proposed FPL-Entergy merger. The Commission has not proposed any agency action in this proceeding, and FPL has not sought agency action. FPL fails to see how the conduct of such an investigation possibly could lead to the "injury in fact" contemplated by *Agrico*.

² Colonial's petition does not enumerate every state through which its pipeline runs. It does, however, specifically identify the four closest states to Florida's borders: Alabama, Georgia, Mississippi and Louisiana. The failure to include Florida in such a list strongly suggests that the pipeline does not, in fact, run through Florida.

proceeding. Nor are they subjects that this Commission properly could consider in investigating the planned FPL-Entergy merger. The allegations clearly fail to satisfy the requirement in *Agrico* that the alleged injury is a type against which the proceeding is designed to protect.

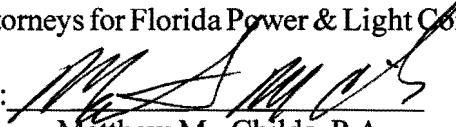
7. Colonial also appears to suggest that it be allowed to intervene as some sort of self-appointed regional coordinator for various regulatory investigations of the planned FPL-Entergy merger. There is no support for Colonial's arrogating that role for itself, and even less for Colonial's basing standing upon such a role. Moreover, the potential impact of this Commission's investigation on investigatory proceedings in other jurisdictions is far too remote to satisfy *Agrico*'s "immediacy" requirement for standing to intervene.

WHEREFORE, FPL respectfully requests that the Commission deny Colonial's petition to intervene in this proceeding.

Respectfully submitted,

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Attorneys for Florida Power & Light Company

By: 
Matthew M. Childs, P.A.
John T. Butler, P.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FPL's Response in Opposition to Colonial Pipeline Company's Petition to Intervene in Docket No. 001148-EI was served by Hand Delivery (*) or mailed this 1st day of December 2000 to the following:

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By: 
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