

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power and Light  
Company Rate Case

Date: 21 MAR 2009

Docket: 080677-EI

SAPORITO ENERGY CONSULTANTS' REPLY TO FLORIDA POWER & LIGHT  
COMPANY'S RESPONSE IN OPPOSITION TO PETITION TO INTERVENE OF  
THOMAS SAPORITO AND SAPORITO ENERGY CONSULTANTS

In a pleading dated March 16, 2009, the Florida Power and Light Company, ("FPL") filed *Florida Power & Light Company's Response in Opposition to Petition to Intervene of Thomas Saporito and Saporito Energy Consultants* ("Opposition"). On March 7, 2009, Saporito Energy Consultants ("SEC"), by and through and with its undersigned president, Thomas Saporito, filed a petition seeking leave to intervene in the instant action. For the reasons delineated below, FPL's Opposition should be DENIED by the Florida Public Service Commission ("Commission") in its entirety.

First, FPL argues in their Opposition that:

"The intervention request should be denied for several reasons. With regards to SEC, the SEC Petition fails to allege that SEC was a legal entity under Florida law, Mr. Saporito is not entitled to appear and represent SEC or SEC's clients because he is not an attorney or 'qualified representative' as required by Commission rules. With regard to Mr. Saporito's request to intervene as an individual, he has a long-standing history with FPL that evidences a clear pattern of filing actions for improper purposes,

including the intent to coerce an offer of employment or other economic consideration from FPL and to delay the proceedings in question. . . Mr. Saporito should not be permitted to intervene in his individual capacity. . . "

*Id.* at 1-2. However, nothing could be further from the truth. First, it was FPL who offered Saporito \$500,000.00 plus the payment of taxes on that amount to settle [h]is whistleblower claim against FPL in *Thomas Saporito v. Florida Power and Light Company*, ALJ Case No. 89-ERA-7/17, an offer rejected by Saporito. Next, contrary to FPL's assertions, SEC is a lawfully incorporated company within the State of Florida as a legal business concern. See, <http://www.sunbiz.org/corinam.html> and simply enter the business name of Saporito Energy Consultants. SEC's articles of incorporation available at that website clearly show that SEC is a lawfully incorporated business concern in the State of Florida. Thus, FPL's assertion that SEC is not a legal entity is wholly false and without merit and apparently intended to mislead the Commission.

With respect to FPL's allegations about Mr. Saporito, the documented record of legal proceedings involving FPL and Saporito evolve around FPL's conduct in retaliating against nuclear whistleblowers at the FPL Turkey Point Nuclear Plant ("TPN"). FPL fired Saporito after [h]e raised nuclear safety complaints about TPN to the U.S. Nuclear Regulatory Commission

("NRC"). See, [http://www.scribd.com/full/4662373?access\\_key=key-1ovw33np2a1zymq6105a](http://www.scribd.com/full/4662373?access_key=key-1ovw33np2a1zymq6105a)

Since his termination from FPL, Saporito has been actively raising additional safety concerns to the NRC about FPL's nuclear operations brought in proceedings before the NRC Atomic Safety and Licensing Board. See, <http://www.nrc.gov/reading-rm/adams.html> and then select "web-based access" and then enter the name "Saporito" into the search block. There you will see the numerous legal proceedings brought by Saporito before the NRC regarding safety complaints about FPL's Turkey Point Nuclear Plant.

In addition, Saporito has filed several whistleblower legal actions against FPL over the last 20-year period with the U.S. Department of Labor ("DOL"). See, <http://www.oalj.dol.gov/> and type in the name of "Saporito" as the Complainant. In addition, type in the name of Florida Power in the "Employer" block to view a history of whistleblower complaints filed against FPL over the years by other nuclear workers.

Contrary to FPL's assertions, SEC and Saporito intend to raise issues central to the FPL rate case and nothing more. It is the credibility of FPL that should be of great concern to the Commission. Notably, in another proceeding involving FPL before the Commission in Docket No. 080001-EI, FPL clearly attempted to

mislead the Commission about the circumstances surrounding a temporary nuclear worker who apparently intentionally and improperly drilled a hole in a pipe at FPL's TPN facility. This event caused the refueling outage to be extended for several days and one or more government agency investigations to occur resulting in a 6-MILLION dollar cost to FPL. Moreover, FPL attempted to improperly push the 6-MILLION dollar costs to the rate payers of FPL. However, the Commission was guided by a November 24, 2008 brief "Citizen's Brief on Issue 13C" where public counsel illustrated the deceptive practices of FPL attorneys in presenting witness testimony and FPL's withholding of material evidence in that case. Public counsel in brief, explained to the Commission that:

"... While assuring the Commission that the Individual had been rigorously screened, FPL's sworn testimony never even mentioned that there existed ANYTHING on the questionnaire that could possibly call the Individual's background into question. Instead, FPL cited all of the areas in which the vandal had been screened and had passed. FPL's sworn testimony stated that the screening process required the Individual 'to successfully complete an FBI criminal history verification...with no disqualifying criminal background' and 'to successfully complete drug and alcohol screening...' . . . However, the Vandal had been arrested for: 1990 Criminal Recklessness and Criminal Mischief. . . 1990 Driving under the Influence . . . 1991 Discharging a fire arm in public . . . 1989 Public Intoxication . . . 1989 Reckless Driving. Further, the Vandal responded 'yes' to the question 'Have you ever used/sold illegal drugs' and did not answer questions relative to participation in

substance/alcohol abuse programs. Finally FPL's sworn testimony assured the Commission that the Vandal 'passed a rigorous psychological examination consisting of nearly 600 questions, with the responses screened for psychological stability and other characteristics. As required, individuals may be subject to further psychological review, including interviews by a licensed psychologist.' . . .The FBI field notes, however, indicated that the individual 'failed his psychological test,' but 'received clearance from a physician in order to gain plant access.' . . . Mr. Jones explained that he never actually looked at the Vandal's questionnaire . . . but instead he based his sworn testimony on assurances from a Mr. Bonthron. . . of the same Mr. Bonthron who apparently led Mr. Jones to believe that there was no reason to disclose to the Commission all of the red flags appearing on the Vandal's security questionnaire."

*Id.* at 3-4. Notably, at the hearing, Commissioner Skop pursued a concern that the individual who drilled the hole had divulged his act of vandalism to a co-worker prior to the hole being discovered by FPL. The co-worker failed to report the conversation until after the vandalism had been discovered by FPL. Commissioner Skop raised questions about FPL's training and whether it included adequate emphasis on how critical it is for workers to report any sign of problems. FPL was unable to respond to the Commissioner's questions except in the most general terms. *See, Public Counsel's brief* at 11-12.

Clearly, it is the conduct of FPL and FPL's attorneys which should be of great concern to the Commission and not that of SEC or Saporito.

## **ARGUMENT**

### **A. SEC Has Legal Capacity to Intervene and Alleges an Adequate Basis for Intervention**

FPL argues that "SEC is not a legal entity with the capacity to participate in this proceeding." *Id.* at 2. However, as stated earlier, SEC is a legal business incorporated within the State of Florida and, as such, SEC has a constitutional right to participate in the instant action as a matter of law. SEC is a corporation with the legal capacity to sue under Florida law. Moreover, SEC is a (subchapter "S" corporation) and is therefore a customer of FPL through its president Thomas Saporito who pays FPL for electric power service for conducting SEC's business. Thus, SEC is a customer of FPL who will be substantially affected by the outcome of this proceeding. Thus, SEC has met the standing requirements under Florida laws and regulations for intervention in the instant action. Therefore, the Commission should grant SEC's Petition for Leave to Intervene in the instant action accordingly.

### **B. Mr. Saporito is Entitled to Represent SEC or SEC's Clients**

FPL argues with respect to Mr. Saporito that,

"...To the extent Mr. Saporito is purporting to represent SEC and/or SEC's clients' interests, he should not be permitted to do so. Mr. Saporito is not an attorney, and has not made the required filing of

qualifications for consideration to become a  
'qualified representative.'

*Id.* at 3. However, the Commission's rules (Rule 28-106106(1), Fla.Admin.Code) clearly allow non-attorneys to participate in rate case hearings before the Commission. Under Rule 28-106.106(1), Saporito is a "qualified representative" with the capacity to more than adequately represent SEC's interests and that of SEC's client's interests at the FPL rate hearing. As stated earlier, Saporito has been in various forums of litigation with FPL over the past 20-years. Saporito has represented himself as well as other nuclear workers in Federal Court in Administrative Law Proceedings before the Office of Administrative Law Judges and the Secretary of Labor and the Administrative Review Board and has appeared before the 11<sup>th</sup> Circuit Court of Appeals and the U.S. Supreme Court. In addition, Saporito has appeared in hearings before the U.S. Nuclear Regulatory Commission's Atomic Safety and Licensing Board regarding FPL's nuclear operations. All of these types of proceedings are exceptionally sophisticated areas of specialized law similar to the present FPL rate case and certainly more complex than the present FPL rate case. Thus, Saporito has more than demonstrated to the Commission his capacity to represent SEC and SEC's clients as well as himself at the FPL rate case.

**C. Mr. Saporito Should Be Permitted to Intervene as an Individual**

FPL argues that the Commission should not allow Saporito to intervene in the instant FPL rate case because of a "long standing history between Mr. Saporito and FPL" . . . that . . . "demonstrates that Mr. Saporito is acting improperly in attempting to intervene in these proceedings." *Id.* at 4. FPL then goes on to argue Saporito's history of litigation with FPL involving the U.S. Department of Labor and the U.S. Nuclear Regulatory Commission, that Saporito's actions in those proceedings should somehow disqualify him from participation in the present FPL rate case. However, FPL's interface with Saporito in litigation before the U.S. Department of Labor and before the U.S. Nuclear Regulatory Commission serve only to bolster Saporito's qualifications and standing to intervene in the present FPL rate case. Those proceedings clearly show Saporito's qualifications to make legal arguments, to present witness testimony, to cross-examine witnesses, to present exhibits, to file briefs, etc.

**D. Customers Would Be Harmed By Denying Mr. Saporito's Intervention**

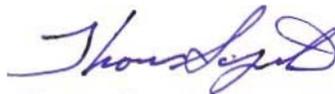
Contrary to FPL's assertions in their Opposition, there is every reason to expect that FPL customers' interests will benefit from Saporito's intervention in the present FPL rate

case. Saporito has a 20-year history of litigation with FPL in other legal forums where he gained expertise in legal proceedings similar to the FPL rate case. Moreover, Saporito is a customer of FPL and an FPL stockholder. As such, Saporito has more than demonstrated requisite standing to intervene in the present FPL rate case as a matter of law.

#### **CONCLUSION**

FOR ALL THE ABOVE STATED REASONS, Thomas Saporito and SEC request that the Commission GRANT the SEC Petition and allow SEC and Thomas Saporito to intervene in the instant FPL rate case as a matter of law.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing document was provided electronically this 21<sup>st</sup> day of March, 2009, to the following:

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By:

