US EPA ARCHIVE DOCUMENT

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October 11, 2005

- VIA HAND DELIVERY -

Stephen Johnson, Administrator
United States Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, , N.W.
Washington, D.C. 20460

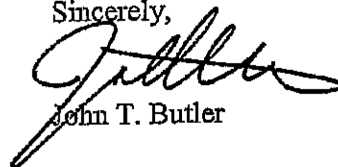
Re: Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule), 70 *Fed. Reg.* 25162

Dear Mr. Johnson:

I am enclosing a supplement to FPL Group, Inc.'s July 11, 2005 Petition for Reconsideration of the above rule. The supplement transmits and briefly addresses the final report of Alpine Geophysics, LLC ("Alpine") and ENVIRON International Corporation ("Environ"), dated October 3, 2005 and entitled *Subregional CMAQ Modeling of the Contribution of South Florida Emissions to PM2.5 Nonattainment Under EPA's 2010 Clean Air Interstate Rule (CAIR)*. FPL Group intends to file another supplement in the very near future transmitting a separate report that addresses the results of Alpine's and Environ's ozone non-attainment modeling.

If there are any questions regarding this transmittal, please feel free to contact me at 305-577-2939.

Sincerely,



John T. Butler

Enclosure
cc: Jeffrey Holmstead, EPA (w/encl.)
Steve Page, EPA (w/encl.)
Brian McLean, EPA (w/encl.)
Kevin McLean, EPA (w/encl.)
Norman Rave, USDOJ (w/encl.)

MIA2001 416256v1

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call	)))))	**OAR-2003-0053** **FRL-7885-9** **RIN 2060-AL76**

Supplement to FPL Group, Inc.'s Request For Reconsideration of EPA's Final Clean Air Interstate Rule (CAIR)

On July 11, 2005, FPL Group, Inc. ("FPL Group") submitted a Petition for Reconsideration (the "Petition") of the Final Clean Air Interstate Rule ("CAIR"). 70 *Fed. Reg.* 25162. FPL Group objected to and requested reconsideration of two aspects of CAIR: (a) EPA's failure to recognize that emission sources in southern Florida do not significantly contribute to downwind ozone or PM2.5 non-attainment, and (b) EPA's determination that fuel adjustment factors should be used to adjust the heat input data from which the state NOx budgets are derived. With respect to the first issue, the Petition advised that FPL Group was involved in modeling to distinguish between the contributions to downwind ozone and PM2.5 non-attainment from sources in northern and southern Florida. FPL Group stated that it had diligently pursued this modeling but had been unable to complete the modeling within sixty days after CAIR was published. FPL Group said that it would submit the results of the modeling and related comments once the modeling was completed.

The PM2.5 modeling is now complete. Attached hereto is the final report of Alpine Geophysics, LLC ("Alpine") and ENVIRON International Corporation ("Environ"), dated October 3, 2005 and entitled *Subregional CMAQ Modeling of the Contribution of South Florida Emissions to PM2.5 Nonattainment Under EPA's 2010 Clean Air Interstate Rule (CAIR)* (the "PM2.5 Report").

As expected from the preliminary modeling results that were discussed in the Petition, the PM2.5 Report demonstrates clearly that southern Florida sources do not significantly contribute to downwind PM2.5 non-attainment and should not be subject to the CAIR. Specifically, the PM2.5 Report shows the following:

- The size and geography of Florida make it clearly inappropriate to evaluate the contribution to non-attainment of the state as a whole. Florida is larger than eight CAIR states combined, and the separate "north Florida" and "south Florida" regions evaluated in the PM2.5 Report are each larger than any one of those eight CAIR states. Moreover, prevailing wind patterns indicate that south Florida is not typically "upwind" of the relevant non-attainment counties.
- Alpine and Environ were able to reproduce EPA's modeling of the PM2.5 contribution from Florida as a whole to the relevant non-attainment counties. The results of the two sets of modeling are essentially identical.
- Using the same modeling techniques and data that precisely reproduced EPA's results for Florida as a whole, Alpine and Environ demonstrated that south Florida's "zero-out" contribution to non-attainment in the relevant counties was in all instances well below EPA's "significant contribution" threshold of .20 micrograms per cubic meter.
- In contrast, those modeling techniques and data show that north Florida's contribution to non-attainment in the same counties was in all instances higher than the south Florida contribution and meets EPA's definition of "significant."

The Petition cited *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000) in support of FPL Group's position that EPA improperly failed to consider separately the non-attainment contributions from southern and northern Florida. In that case, the Court observed that "where the data . . . inculpate part of state and not another, EPA should honor the resultant findings," and that "offering finer-grained computations . . . seems more like a healthy search for truth than the collapse into infinite regress that EPA claims to fear." *Id.* at 684. This approach is especially sound for "states on the perimeter of the [] problem." *Id.* The PM2.5 Report provides this "finer-grained computation" and, as summarized above, clearly shows that if EPA had conducted finer-grained modeling, it would have concluded that a substantial portion of Florida does not, in fact, contribute significantly to PM2.5 non-attainment in another state. As stated in *Michigan v. EPA*, "[t]he critical issue is whether the targeted 'source' or 'emissions activity' 'contribute[s] significantly to nonattainment' in another state." *Id.* at 682. The PM2.5 Report shows that sources in south Florida do not.

The court recognized in *Michigan v. EPA* that Clean Air Act Section 110(a)(2)(D) only authorizes regulation to the extent that the regulated sources contribute significantly to non-attainment, or interfere with maintenance, in another state. The PM2.5 Report clearly shows that a substantial portion of Florida does not contribute significantly to PM2.5 non-attainment in another state. Subjecting that portion of the state to CAIR is therefore arbitrary and contrary to the Clean Air Act. Moreover, given EPA's effort to justify CAIR from a cost-effectiveness standpoint, it is irrational to subject emissions sources in southern Florida to the extremely burdensome CAIR program when the modeling clearly shows that they do not contribute significantly to non-attainment in any other state.

As noted above, the Petition also seeks reconsideration of EPA's determination that all of Florida significantly contributes to ozone non-attainment. FPL Group advised EPA that it was involved in modeling ozone non-attainment. FPL Group intends to submit an additional supplement to the Petition in the very near future with a report on the results of that modeling.

Respectfully submitted,

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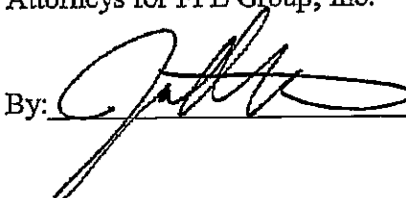
Attorneys for FPL Group, Inc.

By: 

STATE OF FLORIDA

PUBLIC SERVICE COMMISSION

2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

TO: John T. Butler
Fax #: 6,13055777001

FROM: Records Fax Server

RE:

Note: This fax was generated by the Case Management System.

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 050001-EI ORDER NO. PSC-05-0962-PCO-EI ISSUED: October 10, 2005

ORDER GRANTING INTERVENTION

By petition dated September 26, 2005, AARP requested permission to intervene in this proceeding. AARP states that it is a non-profit membership organization representing the needs and interests of persons 50 years old and older, with approximately 2.7 million of its members residing in Florida. A significant number of AARP s Florida members are retail residential customers of the five electric utilities that are seeking fuel adjustment modifications in this docket. Therefore, since the relief requested by the utilities includes increases in their fuel adjustment charges, AARP alleges that many of its members will be substantially affected by any action the Commission takes in this docket. No response was filed to AARP s petition.

Having reviewed the Petition, it appears that AARP s substantial interests may be affected by this proceeding. No party expressed opposition to AARP s request to intervene, and the time for doing so has elapsed. Therefore, the Petition shall be granted. Pursuant to Rule 25-22.039, Florida Administrative Code, AARP takes the case as it finds it.

Therefore, it is

ORDERED by the Florida Public Service Commission that the Petition to Intervene filed by AARP is hereby granted. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings, and other documents which may hereinafter be filed in this proceeding, to:

Michael B. Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256
Email: miketwomey@talstar.com

By ORDER of the Florida Public Service Commission this 10th day of October, 2005.

/s/ Blanca S. Bay
BLANCA S. BAY , Director
Division of the Commission Clerk
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

AEV

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.