ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power & Light Company.	)	**Docket No. 020262-EI**
In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power & Light Company.	)	**Docket No. 020263-EI**
	)	**Filed: September 23, 2002**

FACT'S MOTION FOR RECONSIDERATION TO FULL COMMISSION

The Florida Action Coalition Team ("FACT"), pursuant to Rules 28-22.060 and 25-22.0376, Florida Administrative Code, hereby moves the Florida Public Service Commission ("Commission") to reconsider Order No. PSC-02-1260-PCO-EI, entered on September 13, 2002 by Prehearing Officer Commissioner Deason, which order found that FACT had to answer Florida Power & Light Company's ("FPL's") First Set of Interrogatories, First Request for Production of Documents, and provide FACT Executive Director Ernie Bach for deposition. In support of its motion, FACT states as follows:

BACKGROUND

1. On July 11, 2002, Prehearing Officer Commissioner Deason entered his Order No. PSC-02-0934-PCO-EI granting FACT's amended petition to intervene stating, in part:

> In its amended Petition, FACT states that it is a statewide, non-partisan, grassroots public interest organization, ". . . representing the interests of its members in taxpayer, consumer, healthcare, environmental and public utility issues, among others." FACT alleges that a number of its members are retail residential customers of FPL, whose substantial interests will be affected by the outcome of these need determination dockets. FACT provided the names and addresses of 6 FACT members who are retail electric customers of FPL, but asserted that other FACT members are also retail customers of FPL. FACT

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OTH

asserts that the Commission's decision in these dockets will affect the rates its members' pay to FPL for electricity, and therefore they have an interest in the Commission's determination whether FPL has proposed the most-cost effective means to acquire additional generating capacity. FACT also points out that the Commission must consider whether FPL has taken all reasonably available conservation measures to avoid or defer the need for new generating capacity. FACT states that; "[f]ailure to implement cost-effective conservation measures in lieu of building new power plants will, by definition, increase customer rates more than is otherwise necessary."

In its Amended Petition to Intervene, FACT has adequately alleged that the substantial interests of a substantial number of its members may be affected by the Commission's decision in these dockets, and that those interests are both the type of interest the Commission's need determination proceedings are designed to protect and the type of interest FACT is entitled to represent on behalf of its members. For these reasons, FACT's Amended Petition to Intervene is granted. (Emphasis supplied.)

2. Following the ordering paragraphs of Order No. PSC-02-0934-PCO-EI appeared the standard administrative and appellate review opportunity language required by Florida Law, which read:

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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.

3. As stated above, the order granting FACT intervenor status in these dockets was entered on July 11, 2002. The tenth day by which a party adversely affected by this order could have sought reconsideration by the full Commission ran on July 21, 2002 without FPL, or any other party, seeking review of Commissioner Deason's order. Likewise, the 30 day period in which to seek appellate review to the Florida Supreme Court expired without FPL seeking such review. To date, no party, including FPL has sought administrative or appellate review of Order No. PSC-02-0934-PCO-EI and the time for doing both has expired. Consequently, FACT has been a party to these docket since July 11, 2002 and remains so by virtue of an order that could have been reviewed, but which was not.

4. On August 1, 2002, FPL served upon FACT its First Request for Production of Documents to the Florida Action Coalition Team, which included, among others, requests for:

a. A list of the exact current membership of FACT;

b. The name and address of each FACT member who is a retail residential customer of FPL;

c. All documents relating to FACT's engagement of the services of Michael B. Twomey, including the basis for his compensation and the parties responsible for his compensation;

d. as well as other requests either not related to the associational representation issue or the need determination issues.

5. Also on August 1, 2002, FPL served upon FACT its First Set of Interrogatories to the Florida Action Coalition Team, which, among others, included the following questions:

a. Please list the exact current membership of FACT;

b. Please list the name and address of each FACT member who is a retail residential customer of FPL;

c. Please explain how and when FACT engaged the services of Michael B. Twomey, including the basis for his compensation and the person or persons responsible for compensating him.

d. as well as other questions either not related to the associational representation issue or the need determination issues.

6. On August 8, 2002, FPL served upon FACT its Amended Notice of Taking Deposition Duces Tecum, which directed the deponent, Ernie Bach, to bring to the deposition, amongst other things, copies of documents concerning the . . . membership of the Florida Action Coalition Team ("FACT") and copies of documents concerning the decision by FACT members or representatives to intervene in FPL's Determination of Need proceeding.

7. Thereafter, on August 12, 2002, FACT served FPL, by both facsimile and U.S. Mail, with FACT's objections to FPL's First Request for Production of Documents and its First Set of Interrogatories.

8. On August 19, 2002, FACT served upon FPL its Objections to FPL's Amended Notice of Taking Deposition Duces Tecum.

9. On August 21, 2002, FPL served upon FACT its Motions to Compel FACT to Respond to its First Set of Interrogatories and First Request for Production of Documents and Motion to Compel Intervenor's Deposition.

10. On August 26, 2002, FACT filed its Fact's Motion for Protective Order; Motion for Order Limiting Discovery; and Motion for Stay in Relation to Florida Power & Light Company's First Request for Production of Documents and First Set of Interrogatories. This motion essentially asked the Prehearing Officer to: (1) protect FACT from any further discovery related to its party status for the reason that FPL had failed to seek review of the Prehearing Officer's order granting FACT party, which order then was "final" for purposes of interlocutory review; and to (2) specifically limit any continuing FPL discovery to a specific list of issues in the event the argument that the order granting FACT party status was "final" was not accepted. With respect to the request that Commissioner Deason specifically limit the areas of permissible discovery, FACT said:

> 35. If FPL is to be allowed to test FACT's associational standing, then FACT would urge the Commission to, pursuant to Rule 1.280(c)(4), Florida Rules of Civil Procedure, order "(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters." Specifically, and first, FACT would request that the Commission issue its detailed order limiting discovery to these specific subjects:
>
> > (a) Whether FACT is an "association" within the meaning of Florida Home Builders and subsequent case law evolved from it;
> >
> > (b) The total number of coalition team members currently associated or affiliated with FACT;
> >
> > (c) The number of coalition team members that are FPL customers and, thus, will be "substantially affected" by the Commission's determination on the "need" of the two plants and whether they are the most cost-effective alternative available;

(d) Whether the "subject matter" of these proceedings, namely the determination of the need for these generating units and their cost-effectiveness is within FACT's "general scope of interest and activity;" and

(e) Whether FACT seeking to ensure that the Commission makes the correct decision on the "need" for the generating units and that the units are the most cost-effective is of a type relief (cost-effective and appropriate) for it to receive on behalf of its members.

36. Conversely, FACT would request that the Commission protect it from annoyance, oppression and undue burden and expense by specifically prohibiting FPL from seeking discovery on the following issues, which are irrelevant to the issues, privileged or both:

(a) A listing of the names and addresses of all FACT members, or all FACT members that are customers of FPL;

(b) Any questions as to FACT's financial condition, or sources of funding;

(c) Questions related to the hiring of FACT's attorney of record in these dockets, Michael B. Twomey, the basis for his compensation and the person or persons responsible for compensating him, which questions are privileged as attorney-client and are not relevant to any of the issues in this case, whether the focus be the need determination or the limited questions involving "associational standing;" and

(d) Questions related to how FACT decided to "intervene in FPL's Determination of Need proceeding"

11. On September 13, 2002, Commissioner Deason entered his order for which reconsideration is sought here denying FACT's motions and granting FPL's motions to compel by ordering that the "Florida Action Coalition Team shall make its founder, Ernie Bach, available for deposition immediately, and the Florida Action Coalition Team shall respond to FPL's other discovery within five days of the date of this order." Generally, Commissioner Deason's order rejected the argument his prior order was "final" as to the party status issue and failed to specifically limit the issues open to further discovery as FACT had requested above. Instead,

Commissioner Deason recognized a more general and limited protection available to FACT, saying in the order:

> Nevertheless, this Order grants FPL's request for discovery from FACT as to all information, not privileged, that is reasonably likely to lead to admissible evidence. FACT may assert applicable privilege objections to discovery as they arise, but must specifically explain how the information sought is privileged, and should be aware that assertion of privilege regarding members of FACT may affect FACT's ability to prove standing.

12. On Friday, September 20, 2002, FACT filed with the Commission its Motion to Quash Subpoena Duces Tecum, which motion sought protection against the subpoena served at 5:30 the previous evening and seeking to compel Mr. Bach's attendance at a deposition the afternoon of the 20th.

MOTION FOR RECONSIDERATION

13. The standard for reconsideration, stated generally, requires a showing that the Commission made a mistake of fact or law, which, if corrected, would necessarily lead to a result different from that expressed in the order. FACT believes that there are two such mistakes in the order it is seeking reconsideration of.

FPL failed to timely challenge the Commission order granting FACT party status

14. FACT's primary position on reconsideration is that Commissioner Deason's order granting FACT's amended petition to intervene was unqualified, was not challenged by FPL within the statutory time limits, and is now beyond further interlocutory commission review or interlocutory appellate review. Commissioner Deason's September 13, 2002 Order contains precisely the same "notice of further proceedings or judicial review" language FPL failed to avail itself of in Commissioner Deason's order granting FACT party status, namely: "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, if issued by a Prehearing Officer. . . ."

15. As cited to above, on July 11, 2002, Prehearing Officer Commissioner Deason entered Order No. PSC-02-0934-PCO-EI granting FACT's amended petition to intervene. The order was neither qualified in its grant of party status to FACT, nor did it establish an obligation that FACT "prove up" the allegations in its amended petition to intervene at final hearing. In fact, the only qualified portions of the order related to the "boiler plate" provisions notifying the parties of their available review opportunities if dissatisfied with the order. That is, the "boiler plate" advised that review was available, but stressed that such review had to be both timely sought and with the appropriate body.

16. Section 120.569(1), Florida Statutes, requires this Commission, and all applicable agencies, to give parties notice of all orders published in the proceedings they are in, and to make the parties aware of all administrative and judicial review available to them from orders adversely affecting them, as well as the procedures to be followed in seeking review and the applicable time limitations for seeking such review. This statute is the basis for the "boiler plate" review language discussed above. This section reads as follows:

> 120.569 Decisions which affect substantial interests.--
>
> (1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the

> address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.

(Emphasis supplied.) As cited above, Order No. PSC-02-0934-PCO-EI specifically notified FPL, or any other adversely affected party, that it had ten days to seek reconsideration of a Prehearing Officer's order, or to seek judicial review by the Florida Supreme Court, pursuant to Rule 9.100, Florida Rules of Appellate Procedure, which rule allows 30 days from order rendition to seek review. Again, FACT has not been given notice that FPL elected to seek review of Commissioner Deason's order, either by the full Commission, or at the Florida Supreme Court, and can find no evidence that FPL availed itself of those routes to challenge FACT's grant of party status.

17. It should be noted that FPL's failure to timely avail itself of the review procedures immediately available to it does not preclude FPL from seeking review of FACT's party status on review of the Commission's final order at the Florida Supreme Court. In fact, the Commission's standard "boiler plate" review language puts FPL and others on notice that judicial review to the courts is typically only available on an interlocutory basis "if review of the final agency action will not provide an adequate remedy." By case law, such a showing usually requires a demonstration to the court that the petitioner would suffer "irreparable harm" if the order below were not reversed prior to entry of the final agency action. Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097 (Fla. 1987). FACT would submit that FPL would likely have had great difficulty in making such a case of irreparable harm to the Supreme Court by the mere existence of FACT as a party in these proceedings. FPL's difficulty in carrying this burden would seem especially

difficult given FACT is on the record as saying it will not offer the testimony of any witness, and, in fact, has missed the August 20, 2002 deadline for offering such prefiled witness testimony in any event. Consequently, FACT is left with the task of "hurting" FPL's case through the adoption of issues in the case and through cross-examination!

18. Florida courts have recognized the necessity for finality in administrative orders, just as in judicial orders. In Peoples Gas System, Inc. v. Mason, 187 So.2d 335 (Fla. 1966), the Court stated:

> The effect of these decisions is that orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.

While it's true that Peoples Gas involved this Commission effectively changing a final order some four and one-half years later, the principle of finality and certainty is equally applicable to non-final orders and the situation at hand. If the review provisions contained in Order No. PSC-02-0934-PCO-EI were not applicable to the sole decision made in the order - namely, the granting of party status to FACT - what could they have been in reference to? FACT was granted intervenor status by the order, FPL failed to seek review of that party status, or to seek a prehearing evidentiary hearing on the issue, or to seek qualified party status for FACT subject to proof of standing at final hearing, as it might have. Consequently, FACT should now be entitled to rely on that unchallenged order.

19. By FACT's count, the Prehearing Officer and full Commission have published in excess of 25 procedural orders in this case, all of which contained exactly the same "further review" language as the order sought to be reviewed here. Is there "finality" to any of the rest of these orders? If so, how many and how are they any different than the order under consideration here?

20. FPL has asserted that proof of party standing is always subject to being heard at final hearing and cites to any number of Division of Administrative Hearings (DOAH) cases in support of that contention. FACT would submit, however, that all of the cases it could find suggesting that contested standing automatically had to be "proven up" at final hearing, in fact, said no such thing and are both factually and legally distinguishable from the instant case and, likely, all Commission cases.

21. In its Motion to Compel Intervenor's Deposition, FPL, at page 3, cites to Edgewater Beach Owners Ass'n, Inc. v. Bd. of County Commissioners of Walton Co., 1995 WL 1052993 (DOAH) Case No. 95-0437DRI), *on remand from* Edgewater Beach Owners Ass'n. Inc. v. Bd. of County Commissioners of Walton Co., 645 So. 2d 541, 543 (Fla. 1st DCA 1994) for the proposition that "an administrative law judge found, on remand from the First District Court of Appeal, that a petitioner lacked standing to appeal a development order because 'the greater weight of the evidence' showed the petitioner had failed to present facts necessary to 'prove up' the petitioner's allegations of standing that the appellate court initially found to be sufficient." While fundamentally true, this recitation doesn't tell the complete story, and, FACT would suggest, could leave the Commission with the false impression that the Court required that standing be demonstrated in that case, or that it requires it in all similar cases.

22. Edgewater started when the Edgewater Beach Owners Association filed a petition with the Florida Land and Water Adjudicatory Commission (FLWAC) challenging a Walton County resolution reviving an expired development of regional impact order. After FLWAC dismissed the Owners Association's amended petition for lack of standing, the Owners Association took an appeal, which resulted in the First District Court of Appeal reversing and remanding on the basis that it had "concluded that the amended petition contained sufficient factual allegations to show that petitioner was 'an owner of . . . affected property' within the meaning of the law, and thus it had standing to bring the action." It was only after the Court remanded the case to FLWAC that it, in turn, forwarded the case to DOAH for hearing.

23. The Owners Association's basis for standing rested on its retention pond being affected by the challenged development. At hearing the administrative law judge determined that the retention pond would not be affected by the development and that it, therefore, lacked standing to challenge the project. It is instructive to note, as did the law judge, that, as the "party challenging the amended development order, petitioner [Owners Association] bears ' both the ultimate burden of persuasion and the burden of going forward.'" FACT would suggest that being the moving party, as opposed to being a mere intervenor in a case where FPL carries the burden of showing the need for its sought after generating units, is critically important because whether there was any relief at all in that case depended upon whether there was standing for the Owners Association, i.e., whether their retention pond was affected. FACT's standing plays no such critical role in the instant case and, more importantly, there is a question whether the Owners Association had the benefit of an unchallenged order granting party status to the case, as does FACT here. In fact, it appears clear that the Owners Association had no such unqualified

order granting it intervenor status, since it was not an intervenor. Furthermore, it appears that DOAH, as a general practice, typically grants challenged intervenors (1) initial party status subject to proof of standing at final hearing and (2) pursuant to orders providing no notice of opportunity for reconsideration or judicial review.

24. The second DOAH case cited by FPL in its Motion to Compel Intervenor's Deposition, Ocala/Silver Springs Hilton v. Ocala Park Centre Maintenance Assoc., 1997 WL 1052617 (DOAH Case No. 95-3848, April 24, 1997) illustrates what appears to be a common DOAH practice of granting intervenor or party status with the specific qualification that standing be proven at the final or formal hearing. In Ocala/Silver Springs Hilton, the administrative law judge wrote at page 3: "On November 8, 1996, an Order was entered denying both motions to dismiss without prejudice, but requiring Hilton and the Association to each prove-up their respective standing at formal hearing." Although the order in question was neither available on the DOAH website, nor in its current files due to the relative age of the case, more recent examples of such orders were found illustrating what appears to be a common DOAH practice that is not followed at the Commission.

25. As reflected in Exhibits 13 and 14 to FACT's Motion for Protective Order filed with Commissioner Deason, respectively, in the case of William Howard Solomon v. Florida Communities Trust (DOAH Case No. 00-2089), Administrative Law Judge Hood entered orders granting intervenor status to the City of Jacksonville and the Mandarin Community Club, but with the specific ordering paragraph qualification in each order that: "the motion to intervene is granted subject to proof of standing during the final hearing." Furthermore, for whatever reason, these orders, unlike Commission orders, contain no recitation of what administrative or judicial

review rights are available to a party adversely affected by the orders. Subsequently, Judge Hood's Recommended Order in the case at page 4 reflected the preliminary and conditional grant of intervenor status for the Mandarin Community Club with the statement: "An order dated July 31, 2000, granted the MCC's Motion to Intervene subject to proof of standing during final hearing and denied the Request for Preliminary Hearing on Standing. See Order in William Howard Solomon v. Florida Communities Trust at page 4, which was attached as Exhibit 15 to initial FACT Motion for Protective Order.

26. While FACT is unable, to date, to locate more administrative law judge orders specifically granting qualified intervenor status with the requirement that standing be proved at final hearing, and without no administrative and appellate review options provided, FACT was able to locate 12 additional DOAH recommended or final orders in which the "preliminary statement" included a recitation that "Intervention was granted subject to proof of standing at final hearing." The cover pages and initial relevant pages leading to this qualified intervenor statement in each of these 12 orders were attached as consolidated Exhibit 16 initial FACT Motion for Protective Order. The referenced statement appears on the last included page of each order and is identified with a vertical line in the adjacent right hand margin.

27. Commissioner Deason's order granting FACT it's party status in this case became "final" for purposes of further interlocutory review, either at the Commission or the Supreme Court, and it was fundamental error for Commissioner Deason to grant FPL additional discovery on the issue of associational standing and FACT"s party status.

Further Protection Should Have Been Provided With Respect To Discovery

28. The Commission has the authority, indeed the obligation, pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, to issue protective orders where appropriate. The rule provides:

> (c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred in relation to the motion.

29. Whether FPL should be allowed discovery and, conversely, whether FACT should be protected from having to provide certain information is dependent upon whether the information sought falls within the scope of the permissibly discoverable. All information possessed by a party is not available to opponents in a case and it is Rule 1.280(b), Florida Rules of Civil Procedure that provides the limitations on what can be had. The rule states:

> (b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:
>
> (1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(Emphasis supplied.)

30. Having determined that FPL did not waive its ability to question FACT's party status by ignoring the review options afforded by his order granting party status to FACT, Commissioner Deason should still have protected FACT from annoyance, oppression and undue burden and expense by strictly limiting any FPL discovery to the issue of "associational standing" and any other issues related to the core purpose of these hearings under Section 403.519, Florida Statutes. He did not and it was fundamental error that he did not.

31. If "associational standing" is still viable for FPL's discovery, what are the issues to be considered in determining whether the discovery is permissible? In Florida Home Builders Ass'n v. Dept. Of Labor, 412 So.2d 351 (Fla. 1982), the Florida Supreme Court established the elements of proof for associational standing, saying:

> After reviewing the legislative history and purpose of chapter 120, we have concluded that a trade or professional association should be able to institute a rule challenge under section 120.56 even though it is acting solely as the representative of its members. To meet the requirements of section 120.56(1), an association must

> demonstrate that a substantial number of its members, although not necessarily a majority, are "substantially affected" by the challenged rule. Further, the subject matter of the rule must be within the association's general scope of interest and activity, and the relief requested must be of the type appropriate for a trade association to receive on behalf of its members.

32. If FPL is to be allowed to test FACT's associational standing, then FACT would urge the Commission, pursuant to Rule 1.280(c)(4), Florida Rules of Civil Procedure, to order "(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters." Specifically, and first, FACT would request that the Commission issue its detailed order limiting discovery to these specific subjects reflected earlier in this pleading.

33. Accordingly, FACT would respectfully request that the full Commission, if it allows discovery on the issue of associational standing, enter its written order specifically delineating what FPL may permissibly ask and not ask pursuant to the requests above. Deltona Corporation v. Bailey, 336 So.2d 1163 (Fla. 1976); Canella v. Bryant, 235 So.2d 328 (Fla. 4th DCA 1970).

WHEREFORE, the Florida Action Coalition Team respectfully requests that the full Florida Public Service Commission enter its written order granting FACT's motion for reconsideration by either entering a Protective Order protecting it from all pending FPL

discovery; or, failing that, enter its written order specifically delineating what FPL may permissibly ask and not ask pursuant to the requests above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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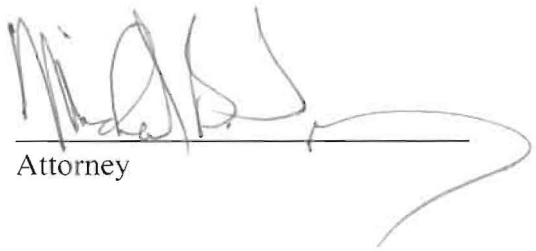

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