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January 3, 1997

By Hand Delivery

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

RE: Request of Public Workshop for Rule Development in Docket No. 961378-EG

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company (FPL) are the original and fifteen (15) copies of FPL's Request of Public Workshop for Rule Development in Docket No. 961378-EG.

If you or your Staff have any questions regarding this filing, please contact me.

Very truly yours,

Charles A. Guyton

Charles A. Guyton

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed amendment of Rule 25-17.015, F.A.C., Conservation Cost Recovery	**Docket No. 961378-EG** **Filed: January 3, 1997**

Request Of Public Workshop For Rule Development

Pursuant to Section 120.54(2)(c), Florida Statutes, Florida Power & Light Company ("FPL") requests a public workshop for rule development regarding the Florida Public Service Commission's Notice of Proposed Rule Development issued December 4, 1996 in Docket No. 961378-EG. The Commission's Notice concerned a potential amendment of Rule 25-17.015, Florida Administrative Code.

The purpose of the proposed amendment listed in the Notice of Proposed Rule Development was to replace semi-annual energy conservation cost recovery proceedings with annual proceedings. The proposed rule goes further than the scope of the notice, and FPL has concerns regarding the scope of the amendments to Rule 25-17.015. That rule clearly needs to be amended, but the amendments proposed raise FPL concerns. FPL respectfully submits that some of the proposed amendments need to be refined or rethought. FPL offers the following observations regarding each of the subsections of Rule 25-17.015 as proposed.

Subsection (1) (a) of the proposed rule requires that the petition show "actual and estimated costs and revenues projected to be incurred by specific program." FPL does not understand how one

has actual costs and revenues for a projected period. The next sentence states that these projected costs and revenues "should be less any actual and estimated revenues for the 18 month period beginning with the month of October that immediately follows the annual filing described in subsection (b)." This is somewhat confusing. FPL does not believe staff intends that this be applied literally. FPL assumes staff means that the projection should be less the net of projected and actual revenues and costs for the 18 month period preceding the projection period. At a minimum, a workshop is needed to discuss whether the language accomplishes what is desired.

Subsection (1)(b) also is of concern to FPL. It requires an annual true-up showing the actual costs and revenues attributed to each program for the prior twelve month period. FPL does not capture revenues by separate conservation programs and has no mechanism to do so. The changes needed to capture such minimal revenues by separate conservation programs would be prohibitively expensive to implement. It would also be costly and unnecessary to prepare 34 separate true-up calculations each month if that is intended. FPL would like the opportunity to discuss just what is intended by this subsection and raise less costly alternatives for providing information. Subsection (1)(b) also ends with the puzzling phrase "of the following year." It is unclear what this period is being referred to with that phrase. FPL thinks it knows what is attempted to be articulated, but FPL does not think that paragraphs (a) and (b) say it.

As to Subsection (1)(c), staff is incorporating by reference a short form for reporting purposes. FPL believes it should have the opportunity at a rule development workshop to review that form before addressing this rule.

Subsection (2) of the amended rule requires a clearing account be established for each conservation program for purposes of recording costs incurred for that program. FPL records all

conservation program costs in separate sub accounts and summarizes the costs monthly by program. Annually, FPL files various schedules which summarize the cost by each program. Therefore, this requirement is redundant and unnecessary.

Subsection (3) requires a listing of all accounts and subaccount numbers. Is it meant to request the values in each as well, or just the account numbers? FPL is also concerned that this may be redundant of other requirements and reports.

FPL would like to discuss the absolute tone of Subsection (4). .On a prior occasion the Commission set forth a procedure for providing notice and incurring expenditures prior to Commission approval. It did so because FPL was able to convince the Commission that some expenditures were prudently incurred. This rule would preclude a similar result in the future, even where an expenditure is prudent and justified. FPL would like to discuss this further in a rule development workshop.

FPL is curious whether the language incorporated into Subsection (5) is meant to articulate a fuel neutrality policy. If so, FPL wants to be fully informed of what is intended. FPL is quite concerned with the detailed filing requirements being imposed for the first time in the remainder of Subsection (5). This is an extremely detailed filing requirement, which typically is handled through discovery. Why this now needs to be incorporated in the true-up filing is unclear. FPL would like to discuss this significant new filing requirement at a workshop.

The amendment to Subsection (6) is most troubling to FPL. The entire subsection is very vague. What is a cost of a substantially similar nature to a cost that was previously disallowed? FPL cannot answer that question objectively. It depends upon how broad a description one makes of the previously disallowed cost. FPL thinks the standard is much too vague for disallowance, creating

a potential "gotcha" situation. Compounding this problem is the repeal of the rule provision which stated that the Commission would issue an order describing the types of costs previously disallowed. Without that provision and the order contemplated therein, companies could be held accountable, at least, for every disallowed expenses in ECCR since 1981. That would require command of at least 26 ECCR orders, plus orders in spinoff proceedings. We say "at least" because the rule does not limit the disallowance to ECCR orders; it just refers to costs "expressly disallowed for cost recovery by a commission order." There may be other non-ECCR orders that could be invoked under this "rule." Even if the order contemplated by the rule as now written were issued, this "rule" would still be subject to different interpretations of whether the cost disallowed is "of a substantially similar nature."

Subsection (6) of the rule as amended does not serve the purpose of a rule: to inform affected persons of the Commission's policy. When costs were previously disallowed, the Commission was not making a rule or a statement of general policy; the Commission was merely deciding individual cases based upon specific sets of facts, and not all the parties potentially affected by the generic application of the determination were even involved or given notice that the dispute might ultimately affect them. The attempt to make such company specific adjudications into a rule by reference frustrates the statutory purpose of requiring rules. The subsection should be repealed, and if the Commission has any general policies to apply to recovery of advertising expenses, those policies should be explicitly articulated in a rule which has been developed in a rulemaking proceeding. This vague incorporation by reference of at least fifteen years of Commission ECCR orders that are subject to construction of whether the costs are of a substantially similar nature is not a meaningful rule and should not be retained.

A workshop on rule development would provide FPL with an opportunity to not only raise its concerns, but also hear from staff why the rule is being amended as proposed. This exchange would facilitate subsequent stages of the rule proceeding by clearly defining issues and perhaps refining the rule development to address concerns. Therefore, FPL respectfully requests a public workshop on rule development in this docket.

Respectfully submitted,

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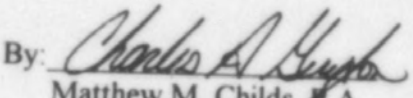
Attorneys for Florida Power
& Light Company

By: 
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