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June 20, 1997

VIA FEDERAL EXPRESS

Blanca S. Bayo, Director
Florida Public Service Commission
Division of Records & Recording
2540 Shumard Oak Blvd. - Room 110
Tallahassee, FL 32399

Re: Docket No. **970410-EI**
Proposal to Extend Plan for the Recording of Certain Expenses for the Years
1998 and 1999 for Florida Power & Light Company

Dear Ms. Bayo:

Enclosed please find for filing with the Public Service Commission the original and fifteen copies of the following documents:

1. Response to Florida Power & Light's Motion to Deny and Dismiss the Petition and Protest of AmeriSteel Corporation; and
2. AmeriSteel Corporation's Response to Florida Power & Light Company's Request for Oral Argument.

Thank you for your assistance in filing the above. Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

1 SALEM, SAXON & NIELSEN, P.A.

Marian B. Rush

Marian B. Rush

MBR/cb3

Enclosures

cc: Attached Service List

ENCLOSURE/PLDG-7.FPL/BAYO6.LTR

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FPSC-REGISTRATION REPORTING

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FPSC-REGISTRATION REPORTING

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(PSC DOCKET NO. 970410-EI)**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Proposal to Extend Plan for)
the Recording of Certain Expenses) Docket No. 970410-EI
for the Years 1998 and 1999 for) Filed: June 23, 1997
Florida Power & Light Company)

**RESPONSE TO FLORIDA POWER & LIGHT'S
MOTION TO DENY AND DISMISS THE PETITION AND PROTEST OF
AMERISTEEL CORPORATION**

I. INTRODUCTION

AmeriSteel Corporation ("AmeriSteel" or "the Customer") hereby files its Response to Florida Power & Light Company's ("FPL" or "the Company") Motion to Deny and Dismiss, filed June 10, 1997 ("Motion") AmeriSteel's Petition and Protest ("Protest") to the Proposed Agency Action ("PAA") adopted by the Commission in this docket. The Motion should be denied because the substantial interests of AmeriSteel, and all FPL customers, are directly affected by the Commission's disposition of the matters in this docket, and AmeriSteel's substantial interests are specified in its Protest. Further, AmeriSteel's Protest objecting to the Proposal to Extend the Plan for the Recording of Certain Expenses for the Years 1998 and 1999 ("the Proposed Plan") identified numerous disputed factual matters that should be resolved by the Commission after full evidentiary hearings.

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II. BACKGROUND

As set forth in AmeriSteel's Protest, the Proposed Plan allows FPL to record significant levels of additional expenses.¹ The Staff recommendations adopted in Attachment A to the PAA identify a prioritized list of accounts where added charges should be taken, but the amounts and entries are yet to be determined. FPL's reported earnings will reflect the full amount of additional expense, including the effect on taxes in each year, and FPL's cash flow in these years will be enhanced as a result of taking \$400 million or more in additional expense.

AmeriSteel's Protest objects to the Proposed Plan in its entirety and requests that hearings be held to address whether approving the Proposed Plan as a whole is in the public interest. The Protest specifically disputes the Plan's piecemeal approach to theoretical reserve deficiencies for certain accounts, and that the Plan ignores other offsetting expense reductions and valuation changes that may be appropriate. (Protest, p.8). AmeriSteel's Protest also specifically questions the following:

- The factual underpinnings for adding to decommissioning and fossil dismantlement accounts at this time, particularly since FPL will be filing updated detailed studies on these matters in 1998. (Protest, p. 10)

¹ The exact amount of additional expense reflects the extent to which FPL's 1998 and 1999 base rate revenues exceed the Company's 1996 base rate revenue forecasts. As described in AmeriSteel's Petition for Leave to Intervene and Objection to Proposed Agency Action, filed April 10, 1997 (the "Petition to Intervene"), added expenses charged under this Plan can be expected to exceed \$400 million in 1998 and 1999.

- All regulatory and accounting issues raised by a policy to establish a level accounting playing field between FPL and potential non-regulated competitors, including specifically the need to re-examine FPL's capital structure. (Protest, pp. 8-9, fn. 6 on p. 9)
- Whether the Proposed Plan provides any benefits to FPL customers. (Protest, p. 10)
- The reasonableness of allowing additional charges to generation plant accounts and regulatory asset amortizations in light of indications that the market value of these assets in competitive generation markets may substantially exceed book cost. (Protest, pp. 10-11)
- The reasonableness of placing all unused or allocated additional charges in an unspecified depreciating reserve. (Protest, p.10)
- The need to assess the revenue requirement, cash flow and earnings ramifications of the Proposed Plan, and particularly from a customer perspective. (See, Protest, pp-10-11)
- The reasonableness of employing the stale 1996 base rate revenue forecast as the basis for determining the level of additional expense to be charged under the Proposed Plan. (Protest, p. 9)
- Whether FPL has demonstrated any need to take additional amortizations of any kind in 1998 and 1999, including for regulatory assets such as unamortized loss on reacquired debt. (Protest, p. 11)
- Whether the Commission should consider the level of excess earnings expected for FPL in 1998 and 1999 absent approval of the Proposed Plan, and, more broadly, unreasonable rates, excessive compensation and intergenerational inequity concerns. (Protest, pp. 7, 11-12)

In short, AmeriSteel's substantial interests, particularly as one of FPL's twenty largest customers, are affected by the outcome of the Commission's decision in this docket. AmeriSteel's Protest

opposes the Proposed Plan in its entirety and identifies specific and logically consistent issues of fact that are disputed and should be fully explored with a full evidentiary hearings after the completion of discovery in this docket.

III. SUMMARY OF ARGUMENT

In its Protest AmeriSteel has adequately set forth its substantial interest in this docket. Further, AmeriSteel amply set forth in its Protest that it disputes the propriety of this docket without full discovery and a hearing and enumerates numerous factual issues in dispute. Finally, the Public Service Commission has the power to expand the scope of a proceeding to include other related matters. FPL's Motion contends that AmeriSteel's Protest:

- does not adequately state a substantial interest in this docket;
- seeks to expand the scope of the docket beyond that permitted by Florida Law; and
- does not identify any disputed issue of material fact.

(See FPL Motion, p.1).

This response addresses FPL's expressed objections to the substance of AmeriSteel's Protest and responds only as necessary to FPL's overblown semantic hairsplitting that it attempts to build into claims of mischaracterization and "fabricated fictitious consequences."² The Protest identifies

² For example, FPL complains that AmeriSteel's Protest described the Proposed Plan as an Accelerated Depreciation Plan. FPL, however, describes this Proposed Plan to investors as accelerated recovery of its fixed costs and regulatory assets "to reduce exposure to potential stranded costs." (See, FPL Internet page, 1996 Financial Highlights, "Accelerating Asset Recover." Thus, the Company's objection to that particular term is incongruous. Moreover, in this docket, in addition to the proposed accelerated writedown of Unamortized Loss on Reacquired Debt, any remaining unallocated amounts will be booked to an "unspecified depreciation reserve," apparently for the ultimate purpose of

numerous disputed factual issues. Further, should the Commission determine that the Protest does not identify all germane material issues of fact, AmeriSteel requests that the Commission exercise its long settled authority to expand the scope of this proceeding to include these matters.

ARGUMENT

A. AmeriSteel Has Demonstrated A Substantial Interest In The Outcome Of This Proceeding.

The Commission recognized AmeriSteel's interest as an FPL customer in the predecessor docket to this case.³ FPL's complaint concerning AmeriSteel's substantial interests in this docket merely repeats the position FPL stated in its April 25, 1997 Response to AmeriSteel's Petition to Intervene which is pending before the Commission.

All FPL customers have a substantial interest in a docket proposing to approve \$400 million plus in added expense items that will alter significantly the likelihood of excess FPL earnings in 1998, particularly where the Plan should, but does not, consider offsetting cost reductions that might accomplish the same balance sheet adjustment objectives while providing rate reductions to customers. The tax expense benefits and cash flow ramifications of the Plan as well as basic

accelerating recovery of FPL's fixed costs where no known theoretical reserve deficiencies exist. This Plan extension, therefore, is appropriately described as an accelerated depreciation plan, and parallels accelerated recovery plans proposed by utilities throughout the country (e.g., Energy, Consolidated Edison) as part of their rate and restructuring plans. In any event, AmeriSteel is indifferent to whatever shorthand reference parties may settle upon to refer to this docket, but it considers the Commission's disposition of the substantive issues posed by this proposal to be significant to AmeriSteel and all Florida electricity consumers.

³ Docket No. 950359-EI was captioned by FPL: *Petition to Establish an Amortization Schedule for Florida Power & Light Company's Nuclear Generating Assets to Address the Potential for Stranded Investment*. For reasons not apparent to AmeriSteel, FPL's Motion takes exception to reference to that case as the "stranded investment docket." This term seems an apt shorthand reference to that case caption but is of no consequence to the merits of AmeriSteel's protest in this docket. (See Request for the Florida Public Service Commission to take judicial notice of its former ruling on AmeriSteel Corporation's Petition to Intervene filed in this docket on May 2, 1997.)

intergenerational customer equity considerations affect all FPL customers and hardly can be overlooked or understated as FPL advocates. Rather than belabor this point, however, AmeriSteel refers to its statement of substantial interest in its Protest, and the full text of Commission Order No. PSC-95-1035-PCO-EI. In sum, AmeriSteel has substantial interests that are affected by the outcome of this proceeding.

B. The Proper Scope Of This Proceeding Includes All Issues Described In AmeriSteel's Protest And Such Other Matters As The Commission Deems Necessary And Appropriate.

FPL maintains that the only permissible scope of this proceeding involves disputed issues raised in AmeriSteel's Protest (Motion, pp. 4-5). The Company follows by arguing that the Protest offers no material disputed issues of fact (Motion, pp. 11-13). Hence, according to FPL, hearings in this case are not warranted. This position is based on a plain misreading of Florida law, complete disregard for the areas of dispute identified in the AmeriSteel Protest (*see* pp. 2-3, above), and similar disregard to terms of the Proposed Plan itself.

1. The Commission Is Statutorily Authorized To Expand The Scope Of Its Proceedings

The ultimate purpose of this proceeding is to provide a basis for the Commission to determine whether approving the Proposed Plan extension for 1998 and 1999 as set forth in the PAA is in the public interest. There is no question that the Commission has the authority to limit or expand the scope of proceedings such as this in order to carry out this task. §366.076(1.), Fla. Stat.,

(1997). Further, Florida Statute, Section 120.80(13)(b), which provides that issues that are not disputed are deemed to be stipulated as a matter of administrative efficiency, in no way limits the power granted to the Commission under §366.076 to ensure that the scope of a proceeding will address the matters it deems appropriate to resolve disputed matters and determine what is in the public interest.

2. AmeriSteel's Protest Adequately Specifies Factual Issues That Are In Dispute

As noted above, \$400 million or more in additional expenses will be taken by FPL in 1998 and 1999 under the Proposed Plan regardless of the accounts eventually charged, offsetting decreased costs, or the presence of reserve surpluses or deficiencies. AmeriSteel's Protest disputes the Proposed Plan in its entirety as contrary to the public interest. As described in specific detail at pages 2 and 3 of this Response, the Protest objects to the use of patently stale revenue forecasts, assigning additional charges to fossil dismantlement and depreciation in advance of a full review of the studies to be filed on those matters in 1998, the need for and reasonableness of accelerated writedowns of other accounts (*e.g.*, unamortized loss on Reacquired Debt), and the basis for placing all remaining unassigned dollars under the Proposed Plan in an unspecified depreciation reserve. In short, AmeriSteel's Protest disputes the reasonableness of the Proposed Plan as a whole, and each of its parts.

Further, the money to fund the Proposed Plan will come from FPL revenue growth above its 1996 forecasts. The Plan has the direct, substantial and immediate effect of moderating reported earnings and enhancing FPL cash flow. While it could be argued that these features are the primary purpose served by the Proposed Plan, the fact remains that the Commission needs to assess the

revenue requirement, earnings – including in particular the effect of the Plan on potential excess FPL earnings, and related rate and accounting ramifications to decide if the Proposed Plan lies in the public interest. Moreover, it is reasonable to ask whether there are other ways to address the theoretical reserve deficiencies and account concerns identified in the PAA Attachment A other than by largely matching FPL's revenue growth with unspecified additional depreciation and amortization related expenses. Alternatives include updating FPL's capital cost and capital structure, adjusting plant account accruals that have surplus reserves and so forth. AmeriSteel's Protest disputes the failure of the Proposed Plan to address any of these matters (Protest, pp. 7-9).

3. FPL's Attempt To Narrow The Commission Scope Of Inquiry To Avoid The Competition-Related Implications Of The Proposed Plan Should Be Rejected

FPL raised broadbased forebodings of competition and potential stranded generation investment in the preceding case, Docket No. 950359-EI. In dramatic contrast, FPL now maintains that the proposal to extend the Plan approved in that docket for two additional years at significantly increased levels of funding constitutes no more than routine patching of observed depreciation reserve deficiencies (Motion, pp. 12-13). The recommended treatment in PAA Attachment A extends well beyond theoretical reserve deficiencies. Indeed, items #3 (\$283 million in unamortized loss on reacquired debt), #2 (tax book timing differences) and #6 (all remaining dollars placed in an unspecified depreciation reserve) are not tied to known reserve deficiencies at all. Rather, they are elements of a Plan openly devised to provide accelerated recovery of regulatory assets and FPL plant accounts in contemplation of growing competition in the industry. The PAA pointedly observes that

the Plan is aimed at establishing a level accounting playing field for FPL in relation to unregulated competitors. (Order No. PSC-97-0499-FOF-EI at p.2).

No party, staff member or FPL representative involved in this docket naively assumes that this is a pedestrian accounting matter. FPL's proposal in Docket No. 950359-EI squarely identified competitive pressures as the basis for its stranded investment proposal in that case, and the instant proposal to extend, with modifications, the Plan approved in the previous docket is equally aimed at competitiveness concerns. FPL's proposed framing of the matters raised in this docket in the narrowest of terms not only lacks any semblance of credibility, it fails even to include half the recommended steps approved in the PAA. FPL's need, or lack thereof, for additional recovery of generation investment or accelerated amortization of regulatory assets, in light of competitive developments, is a core disputed issue raised by the Plan approved in the PAA. AmeriSteel's Protest (at page 11) squarely addresses this concern. Further, FPL is facing an excess earnings situation. The additional expenses allowed under this Plan will have a material effect on that situation. The scope of this proceeding should not be narrowly construed to avoid confronting this issue.

Finally, there is no record support for the Plan. In fact, FPL has offered no explanation, statement of need or justification of any kind for the Proposed Plan. The only reference point is FPL's statements in its Petition for accelerated recovery of nuclear generation investment in the predecessor docket. Therefore, in this docket it is not reasonable to adopt an extremely narrow scope of inquiry when expected questions pertaining to FPL earnings, revenue requirement, and accounting cannot be answered upfront because FPL has failed to offer anything in support of the Proposed Plan. Under these circumstances, AmeriSteel's Protest reasonably describes the factual issues that are in dispute and that necessarily arise from the contents of the Proposed Plan.

CONCLUSION

For the reasons stated above, as well as those described in its Protest, AmeriSteel Corporation requests that the Commission deny FPL's Motion to Deny and Dismiss and direct that a full docket including hearings be held to address all issues AmeriSteel has identified and such other matters as the Commission deems appropriate.

Respectfully submitted,



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Dated: June 20, 1997

**CERTIFICATE OF SERVICE
(PSC DOCKET NO. 970410-EI)**

I HEREBY CERTIFY that a true and correct copy of the Response to Florida Power & Light Company's Motion to Deny and Dismiss the Petition and Protest of AmeriSteel Corporation has been furnished via U.S. Mail on the 20th day of June, 1997, to the following:

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