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December 15, 1997

By Hand Delivery

Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 110
Tallahassee, Florida 32399-0850

Re: Petition of AmeriSteel Corporation for Limited Proceeding to Reduce Florida Power and [sic] Light Company's Annual Revenues and Expedited Hearing Schedule Docket No. 971608-EI

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company are the original and fifteen (15) copies of Florida Power & Light Company's Motion in Opposition to AmeriSteel's Petition in Docket No. 971608-EI. Also enclosed is an additional copy of the Motion which we request that you stamp and return to our runner.

If you or your Staff have any questions regarding this filing, please contact me at 222-2300

Very truly yours,

Charles A. Guyton

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In Re: Petition of AmeriSteel Corporation)
For Limited Proceeding to Reduce Florida)
Power and [sic] Light Company's Annual)
Revenues by \$440 Million)**

**Docket No. 971608-EI
Filed: December 15, 1997**

**FLORIDA POWER & LIGHT COMPANY'S
MOTION IN OPPOSITION TO AMERISTEEL'S PETITION**

Florida Power & Light Company ("FPL"), pursuant to Florida Administrative Code Rule 25-22.037(2)(a), files this motion in opposition to the December 11, 1997 Petition of AmeriSteel Corporation for a Limited Proceeding to Reduce Florida Power and [sic] Light Company's Annual Revenues and for an Expedited Hearing Schedule. As grounds for its motion, FPL states:

Summary of AmeriSteel's Petition

In its petition AmeriSteel seeks a limited proceeding in which the Commission would order an annual base revenue reduction for Florida Power & Light Company of \$440 million dollars, a reduction larger than any single rate increase in the history of FPL. The proposed revenue reduction is premised solely upon two factors, without regard to the myriad other factors considered in FPL's currently established base rates. First, AmeriSteel argues that the current authorized return on equity ("ROE") range for FPL of 11.0 to 13.0% is too high, and that the midpoint of a new range should be 9.5%, more than 200 basis points below the ROE authorized for any major investor owned electric utility in the State of Florida. AmeriSteel quantifies an

associated revenue reduction of \$190 million with the adjustment of the authorized return on equity. Second, AmeriSteel argues that the Commission should disregard both currently authorized expenses approved in Docket No. 950359-EI and any expenses which the Commission may authorize in Docket No. 970410-EI from its earnings calculations for FPL. AmeriSteel suggests that such regulatory amnesia would remove at least \$250 million of expenses in 1998 and 1999.

AmeriSteel also asks the Commission to spread any revenue reduction in equal cents per kWh reductions to each of FPL's rate classes without regard for each class' parity, and that the Commission expedite its consideration of its petition because the plan approved in Docket No. 950359-EI will terminate twenty days from the date AmeriSteel chose to file its petition.

**AmeriSteel's Request to Reduce FPL's
Base Rates Must Be Placed in Context.**

Before addressing the complete absence of merit in AmeriSteel's petition, it is important to place in context the relief that AmeriSteel seeks. When placed in context, two factors clearly emerge. First, FPL's base rates are reasonable. Second, AmeriSteel is attempting to misuse the regulatory process to improperly influence the Commission's decision making in a docket where AmeriSteel has had an exhaustive opportunity to present a case on the merits.

FPL's base rates are reasonable. FPL's last increase in base rates was in 1985. Since FPL's last base rate increase, FPL has added over 9 billion dollars of new plant to serve its ever growing customer base, and FPL has added over 1 million new customers. It would be significant that FPL had added 9 billion dollars of plant and 1 million customers without any base rate increases. What is truly remarkable is that FPL did that over the last twelve years while

actually reducing its base rates. In 1990 FPL, pursuant to Commission oversight, lowered its base rates. Order No. 22334.

While FPL's base rates are actually lower in 1997 than in 1985, on an inflation adjusted basis, FPL's total rates in 1997 are 50% lower than the rates it charged in 1985. That means that the real cost of electricity to FPL's customers, including AmeriSteel, has declined in the last 12 years by 50%.

During those twelve years FPL has consciously and successfully reduced O&M costs paid for by its customers in its base rates. Despite its significant growth in plant, FPL has reduced its O&M expenses by more than 20%. FPL has reduced O&M expenses since 1988 by more than \$450 million below the level associated with the Commission's O&M benchmark

This intentional effort to control O&M costs has benefitted FPL customers by relieving the upward pressure on FPL's rates. This benefit to FPL's customers has been at the expense of the Company's shareholders. In 1990 the Company was reorganized to reduce costs. Costs associated with that effort were \$90 million. Those costs were written off against the Company's earnings in 1991, driving FPL's earned return below the bottom of its authorized return on equity to 10.71%. Did AmeriSteel protest? Of course not, they benefitted at the expense of FPL's shareholders. Again, in 1993 FPL further reduced staff and reorganized. This time the cost was \$138 million dollars which was written off against shareholder earnings. That again drove the Company's earned return on equity below the bottom of its authorized range down to 9.75%. Once again, AmeriSteel was nowhere to be seen or heard.

The fact is that in five of the twelve years since its last authorized rate increase, FPL has earned below the bottom of the range of its authorized return on equity - 1987, 1988, 1989, 1991

and 1993 - and in no year has it earned in excess of its authorized return range. In addition, in 1994 FPL also reduced its dividend to shareholders by more than 30%.

These facts are disregarded by AmeriSteel, which, instead, glibly states in its petition that, "FPL has never hesitated to seek an increase in rates when it considered returns to be insufficient relative to the current market." AmeriSteel petition at p. 5. Since its last base rate increase twelve years ago, nothing could be further from the truth. FPL has hesitated to seek increases in rates, even though in 40% of the years since its last rate case FPL has earned below the bottom of its authorized return on equity. In those twelve years FPL has never earned in excess of its authorized return. In those twelve years FPL's shareholders have borne the cost of \$228 million in restructuring costs designed to benefit customers. During that same period of twelve years, FPL's customers have experienced a rate reduction, and their real cost of electricity has declined 50%. By any objective measure (as opposed to AmeriSteel's desire to pocket money which is better spent restoring deficiencies and continuing to reduce the cost of service for customers in years to come), FPL's base rates are reasonable.

Indeed, one of the most objective measures of the reasonableness of FPL's rates is whether they are currently yielding a return on equity within the Company's authorized return on equity range. They are. FPL's current authorized return on equity range is 11.0 - 13.0%. For the most recent period available, the twelve month period ending September 30, 1997, FPL's monthly surveillance report (a report on which AmeriSteel relies in its petition) shows that FPL's earned return on equity is 12.54%. FPL is currently earning within its authorized return on equity range. This fact is studiously omitted in AmeriSteel's petition, for it demonstrates that FPL's current rates are just and reasonable.

AmeriSteel is abusing the regulatory process. AmeriSteel's timing of its filing is not coincidental. It knows the Commission is deliberating Tuesday in a case where AmeriSteel has been presented every opportunity (over the course of most of a year) to address why the plan for FPL to incur additional expenses in 1998 and 1999 should not be approved. AmeriSteel filed a protest of a PAA order approving the plan, insisted on a hearing, presented testimony, made arguments orally and in brief, and now, in apparent frustration, seeks to influence the Commission by filing a meritless petition to reduce rates. Buried within its petition is the assertion that the Commission "should remove the effect of any such expenses from its earnings calculations for FPL." AmeriSteel petition at 9. Apparently, AmeriSteel assumes failure by asking the Commission to disregard expenses that the Commission has not yet approved. Its last, desperate attempt to influence the Commission is to file this petition in an apparent hope that the flurry of interest it engenders will deter the Commission from reaching a decision with which AmeriSteel disagrees. AmeriSteel's abuse should not be rewarded.

**FPL's Authorized Return On Equity Range Is Reasonable;
It is the Product Of Continuous Commission Monitoring
and Periodic Commission Adjustments.**

In its petition AmeriSteel argues that the authorized return on equity range for FPL is a full 250 basis points below the level of current market conditions. Essentially, AmeriSteel argues that the Commission has been asleep at the switch. The real fact is that FPL's authorized return on equity range is the product of continuous Commission monitoring over the last 12 years, as well as periodic Commission adjustment over that same period of time.

FPL's authorized return on equity range in its last rate case twelve years ago was 14.6% to 16.6%. Order No. 13537. Since the Commission's authorization of that equity rate of return

range, the Commission has monitored through its monthly surveillance reports, both FPL's authorized return on equity and its actual earned return on equity. As a result of its continuing review of FPL's authorized return on equity, the Commission has undertaken at least six adjustments to FPL's return on equity range since FPL's last rate case. On three separate occasions since FPL's last rate case, the Commission reviewed and accepted a reduced return on equity range for purposes of the tax savings rule. See, Order Nos. 17126, 18340, 20451. On three other occasions since FPL's last rate case, the Commission has adjusted FPL's authorized rate of return on equity range. See, Order Nos. 22490, 23996, PSC-93-1024-FOF-EI. As a result of these six intervening Commission reviews since FPL's last rate case, FPL's authorized return on equity range now stands at 11.0% to 13.0%.

As the foregoing discussion shows, the Commission has continuously monitored FPL's actual and authorized return on equity. When the Commission has concluded that the authorized return on equity has been too great, it has undertaken to approve a lower return on equity. To suggest, as AmeriSteel does, that the Commission discontinued that practice since it last adjusted FPL's authorized return on equity is offensive.

Equally offensive is AmeriSteel's casual disregard for accuracy in its return on equity argument in its petition. AmeriSteel argues that FPL has an "unreasonable" equity ratio of "over 61%," and that this "high" equity ratio "justifies a lower allowed equity return for FPL." AmeriSteel petition at 8. AmeriSteel failed to consult its own attachment to its petition, which accurately shows FPL's actual common equity ratio to be 49.54%, not "over 61%." See, AmeriSteel petition, Attachment A, pages 2 and 3. AmeriSteel's manufacture of a "high" equity ratio evidences the total lack of validity in its equity argument.

It should also be noted that the authorized return on equity for Florida Power & Light Company is consistent with the authorized return on equity for the three other major investor owned electric utilities in the state of Florida. Both Florida Power Corporation and Gulf Power Company have exactly the same authorized return on equity range as FPL: 11%-13%. See, Order Nos. PSC-93-0771-FOF-EG, PSC-92-0208-FOF-EG. Tampa Electric Company has a slightly lower authorized return on equity range of 10.75%-12.75%. See, Order No. PSC-95-0580-FOF-EG. As can be seen, FPL's authorized return on equity range is not out of line with that set by the Commission for the other major investor owned electric utilities in the State.

No adjustment to FPL's authorized return on equity range is warranted, despite AmeriSteel's misleading statement regarding FPL's equity ratio. The Commission has undertaken a long and arduous review of both FPL's actual and earned returns, and when appropriate, has reduced FPL's rate of return on equity to reflect market conditions. Moreover, FPL's authorized return on equity is consistent with those authorized for other major electric utilities within the State. This aspect of AmeriSteel's argument should be summarily rejected.

AmeriSteel's Attempt To Have The Commission Disregard Legitimate, Approved Regulatory Expenses Must Be Rejected.

In its petition AmeriSteel seeks to have the Commission disregard from its calculation of FPL's earnings, expenses approved in Docket No. 95039-EI (AmeriSteel Petition at 3) and expenses which may be approved by the Commission in Docket No. 970140-EI (AmeriSteel petition at 9). Because of AmeriSteel's unique position regarding both of those dockets, AmeriSteel should be precluded from advancing these arguments.

In Docket No. 950359-EI, the Commission approved a series of regulatory expenses to be incurred by FPL. See, Order No. PSC-96-0461-FOF-EI. It should be remembered that AmeriSteel intervened in that docket, over strenuous objection by FPL for lack of standing, and after preparing for trial, AmeriSteel fled that docket, allowing it to go forward with a settlement. AmeriSteel was given every opportunity to challenge the expenses ultimately approved by the Commission in that docket. It chose to withdraw from the field. It should not now be heard in its request to have the Commission “disregard from the calculation of FPL’s regulated earnings” the “additional expense and early amortization approved by the Commission in Docket No. 950359-EI.” AmeriSteel petition at 3.

AmeriSteel’s argument that these properly approved expenses should be disregarded is barred by the doctrine of administrative finality.¹ The parties to Docket No. 950359-EI are

¹ Administrative finality is a rule of fairness. The seminal case discussing the doctrine of administrative finality in Florida is Peoples Gas System, Inc. v. Mason, 187 So. 2d 335, 339 (Fla. 1966). The Court summarized the doctrine as it had developed in Florida:

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.

The Court went on to recognize that a distinction between courts and administrative agencies created in agencies a limited additional power in agencies to revisit otherwise final orders. Thus, the Court observed that changed circumstances or great public interest might, under appropriate circumstances, justify a further modification. Id. The Florida Supreme Court subsequently reaffirmed the doctrine of administrative finality in Austin Tupper Trucking, Inc. v. Hawkins, 377 So. 2d 679, 681 (Fla. 1979). The Court firmly established the doctrine as one of fundamental fairness, noting that administrative finality prevented the “administrative nightmare” of litigants permitted to “relitigate indefinitely.” Id.

entitled, as a matter of fairness, to rely upon the Commission's determination in that proceeding. Had AmeriSteel stayed a party, it would be precluded from relitigating the decision based upon the doctrine of res judicata. They should not be rewarded for their flight. The doctrine of administrative finality justifies the Commission treating the decision in Docket No. 950359 as final to AmeriSteel.

AmeriSteel also seeks in its petition to have the Commission "remove the effect of any such expenses [expenses which may be approved in Docket No. 970410-EI] from its earning calculations for FPL." AmeriSteel petition at 9. AmeriSteel's request implicitly acknowledges that the Commission may authorize FPL to undertake additional expenses in its decision in Docket No. 970410-EI. Of course, what this request overlooks is that if additional expenses are approved in Docket No. 970410-EI, the appropriateness of those expenses has been fully litigated by AmeriSteel. In that docket they chose to fight rather than flee. They challenged the propriety of those expenses. If they lose in their challenge, then AmeriSteel, by virtue of its participation in Docket No. 970410-EI, is precluded not only by the doctrine of administrative finality but also by the doctrine of res judicata² from relitigating the propriety of those expenses

² Florida courts unanimously state that if an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it, as to which the parties have had an adequate opportunity to litigate, the court will apply res judicata and collateral estoppel to enforce repose. See generally, Thomson v. Department of Environmental Regulation, 511 So.2d 989, 991 (Fla. 1987); United States Fidelity and Guaranty Co. v. Odoms, 444 So.2d 78 (Fla. 5th DCA 1984); Jet Air Freight v. Jet Air Freight Delivery, Inc., 264 So.2d 35 (Fla. 3d DCA 1972); Rimes & Lannon, Res Judicata and Collateral Estoppel in Administrative Proceedings, Fla. Bar J. 41 (April 1988). The Administrative Procedure Act provides for judicial enforcement of agency actions and states that "[t]he doctrines of res judicata and collateral estoppel shall apply, and the court shall make such orders as are necessary to avoid a multiplicity of actions." Fla. Stat. § 120.69(3). This general rule applies to actions of the Public Service Commission. See, e.g., Florida Power Corp. v. State of Florida, 513 So.2d 1341, 1343 (Fla. 1st DCA 1987).

In fact, they are in a unique position as regards collaterally attacking the propriety of such expenses, as they were the only party of record other than FPL, and they are the only party which has litigated the propriety of the expenses.

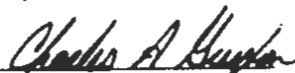
AmeriSteel's attempt to have the Commission disregard regulatory expenses which the Commission has approved in a docket in which AmeriSteel chose to withdraw and AmeriSteel's attempt to have the Commission disregard expenses the Commission may authorize in a proceeding where AmeriSteel challenged the propriety of expenses are barred by the doctrines of administrative finality and res judicata. The argument they advance is precluded to AmeriSteel, and it is not an appropriate basis for their requested relief of a revenue reduction

Conclusion

AmeriSteel's petition is meritless. It is an affront to the Commission which has diligently monitored FPL's actual and authorized return on equity and reviewed and approved regulatory expenses in Docket No. 950359-EI while AmeriSteel sat on the sidelines and enjoyed rates that in real terms have declined by 50% since FPL's last authorized base rate increase. This is yet another opportunistic attempt by AmeriSteel to secure money which is more properly spent to restore reserve deficiencies, underpayments by FPL's customers, and to continue to reduce the cost of service to customers in years to come. AmeriSteel's petition should be summarily denied.

General Development Utilities v. Florida Public Service Commission, 385 So 2d 1050, 1051 (Fla. 1st DCA 1980)

Respectfully submitted,



Matthew M. Childs, P.A.

Charles A. Guyton

Steel Hector & Davis LLP

Suite 601, 215 South Monroe St

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DATED this 15th day of December, 1997

**CERTIFICATE OF SERVICE
DOCKET NO. 971608-EI**

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion in Opposition to AmeriSteel's Petition has been furnished by Hand Delivery (*), or U S Mail this 15th day of December, 1997, to the following:

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