STEEL HECTOR & DAVIS

Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804
850.222.2300
850.222.8410 Fax
www.steelhector.com

Charles A. Guyton
850.222.3423

July 31, 2001

By Hand Delivery

Blanca S. Bayó, Director
Division of the Commission Clerk &
Administrative Services
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

In Re: Complaint of South Florida Hospital and Healthcare Association, *et. al.* against Florida Power and Light Company
Docket No. 010944-EI

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are the original and fifteen (15) copies of FPL's Motion to Dismiss in Docket No. 010944-EI.

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

Very truly yours,

Charles A. Guyton

CAG/lg
encs.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of South Florida Hospital and Healthcare Association, *et. al.* against Florida Power and Light Company, request for expeditious relief and request for interim rate procedures with rates subject to bond	)	DOCKET NO. 010944-EI
	)	Filed: July 31, 2001

MOTION TO DISMISS

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code ("FAC"), hereby moves to dismiss the Complaint of South Florida Hospital and Healthcare Association (hereinafter the "Petition") and states:

On July 5, 2001, Petitioner, the South Florida Hospital and Healthcare Association (the "Hospital Association") in Docket No. 001148-EI asked the Commission to reconsider its determination in Order PSC-01-1346-PCO-EI not to place FPL revenues subject to refund, through a Motion for Reconsideration filed in that case. (A copy of that Motion is attached as Exhibit A.) The next day, the Hospital Association filed its woefully deficient Petition[1] initiating this case, which asks for the very same relief it is pursuing in Docket No. 001148-EI. Through this collateral proceeding, the Hospital Association essentially seeks to abrogate the interlocutory order entered in Docket 001148 and supercede it with an

[1]Although styled as a "complaint," the initial pleading in this case is a "petition" as defined in Rule 28-106.201, FAC, because it seeks affirmative relief and an evidentiary hearing. As such it is subject to the requirement of that Rule. The Petition falls far short of the Rule's requirements. There is no separate statement of the disputed issues of material fact, no clear indication of the ultimate facts alleged, no recognition that the Petition seeks to challenge a prior decision of the Commission in Docket No. 001148-EI, and no identification of the rules that require reversal of that prior decision. *See* Rule 28-106.201(2)(c) - (f), FAC.

order placing interim rates subject to refund under section 366.071, Florida Statutes.[2]

Putting aside for the moment the Hospital Association's failure to meet minimum pleading requirements and the impropriety of seeking review of an interlocutory order in an open docket through a collateral proceeding, a permanent rate case is the only circumstance in which section 366.071 applies.[3] There is no statutory basis for seeking interim rate relief outside the context of a proceeding to set permanent rates. Not stopping there, however, the Hospital Association attempts to bypass the clear and obvious implications of prior Commission orders that conclusively resolve the very issues raised in the Petition. As discussed below, the Hospital Association Petition raises issues that are not properly considered in this docket and asks for relief to which the Hospital Association is not entitled.[4] The Petition should therefore be dismissed with prejudice.

I. INTERIM RATES MAY ONLY BE SET IN THE CONTEXT OF A RETAIL RATE PROCEEDING; THERE IS NO BASIS FOR AN INDEPENDENT INTERIM RATE DOCKET.

There is no basis in the Commission's governing statutes for an interim rate order to be issued outside the context of a proceeding to set permanent rates. The Petition must be dismissed for lack of subject matter jurisdiction.

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[2] Although other statutes are cited in the introductory paragraph, namely section 366.03, 366.05, 366.06 and 366.07, the relief requested is unquestionably that which is allowed, if at all, only pursuant to section 366.071. *See Petition*, p. 1, p. 14 ¶ 24.

[3] Apparently recognizing that such an approach is improper and has no basis in the Commission's rules, the Hospital Association asked for identical relief in Docket No. 001148, by seeking reconsideration of the Commission's determination not to enter an interim rate order in that docket.

[4] Additionally, the Petition utterly fails to demonstrate excess earnings based on the methodology of section 366.071(5), Florida Statutes. This failure to state a cause of action in accordance with statutory requirements is yet one more reason for dismissal.

The sole relief sought here by the Hospital Association is an interim rate order pursuant to section 366.071, Florida Statutes. *See Petition* ¶¶ 22, 24. That statutory provision states in subsection (1) and (2) that:

> (1) The commission may, **during any proceeding for a change of rates, . . . authorize the collection of interim rates until the effective date of the final order. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief.** To establish a prima facie entitlement for interim relief, the commission, the petitioning party, or the public utility shall demonstrate that the public utility is earning outside the range of reasonableness on rate of return calculated in accordance with subsection (5).
>
> (2) . . . .
>
> (b) In a proceeding for an interim decrease in rates, the commission shall authorize, within 60 days of the filing for such relief, the continued collection of the previously authorized rates; however, revenues collected under those rates sufficient to reduce the achieved rate of return to the maximum of the range of rate of return calculated in accordance with subparagraph (5)(b)2. shall be placed under bond or corporate undertaking **subject to refund with interest at a rate ordered by the commission**.

§ 366.071, Fla. Stat. (emphasis added).

As is evident from the plain language of the statute, interim rates may only be set as part of a proceeding to set permanent rates. The Legislature could not have been any more clear that an interim rate order may only be entered in a "proceeding for a change of rates." § 366.071(1), Fla. Stat. This makes perfect sense, as the interim rate order does not itself change rates; it is merely an interlocutory step that makes certain revenues subject to refund based on the final outcome of the rate proceedings. An interim rate order outside the context of a permanent rate case would be a pointless anomaly, since there would never be any determination of whether the subject revenues are to be refunded. Having an interim rate proceeding that stands on its own would thus place revenues in

permanent limbo, as their disposition depends on the resolution of the rate case in which the interim order is entered. This is clearly not what the Legislature intended. Not surprisingly, counsel for FPL has been unable to find any instance of an interim rate order being entered outside the context of a full rate proceeding.[5]

The Hospital Association has apparently recognized this core jurisdictional defect. A proceeding regarding FPL's rates is currently ongoing in Docket No 001148-EI, and the Hospital Association has attempted to intervene as party to that proceeding and, through a motion for rehearing, seek the very relief it requests in this docket. There is simply no justification for opening a parallel docket in an attempt to sidestep the Commission's action in Docket 001148-EI. And, in any case, the Commission's governing statutes clearly preclude the formation of a docket to solely set interim rates.

The Hospital Association's pursuit of parallel relief in Docket No. 001148-EI only highlights the jurisdictional quagmire the Hospital Association has created. There is no valid reason for the Commission to consider the same issue in two separate dockets. Either the Petition is an improper attempt to seek an interim rate decrease in a docket that is not open to consider a permanent rate change, or else it is an invitation to initiate two parallel permanent rate proceedings for the same utility. In either case, acting on the Hospital Association's Petition would merely cause inefficient duplication of work by the parties and the Commission, and potentially lead to inconsistent decisions on the same issue. This is unquestionably improper as a matter of law and undesirable as a matter of policy. The Petition should therefore be dismissed.

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[5] Counsel for the Hospital Association does not appear to have had any success in this regard either. There is no cited authority that authorizes the Commission to entertain a separate proceeding to set interim rates.

II. THE PETITION IS MERELY A THINLY DISGUISED COLLATERAL ATTACK ON COMMISSION ORDER PSC-01-1346-PCO-EI.

Putting aside for the moment the serious defects in the Hospital Association's attempt to initiate a separate proceeding to determine only interim rates, the Petition is also fatally defective because the Commission has already entered an order addressing the very matters raised in the Petition. *See* Order Requiring the Filing of Minimum Filing Requirements, Order No. PSC-01-1346-PCO-EI (hereinafter the "Rate Case Order", attached as Exhibit B). In that order, the Commission expressly considered whether it should set interim rates. It then determined that the issue was already decided by a prior order, Order No. PSC-99-0519-AS-EI (the "Settlement Order", attached as Exhibit C), which through a revenue sharing plan created an "exclusive mechanism to address any excessive earnings that might occur." *See Settlement Order*, Ex. C., p. 6.

Because FPL has at all times remained in full compliance with the Settlement Order, the Commission rightfully determined in the Rate Case Order that it would not hold any revenues subject to refund on an interim basis:

> [W]e did approve the Stipulation in Order No. PSC-99-0519-AS-EI. One provision of the stipulation provides that the revenue sharing plan is to be the parties' "exclusive mechanism" to address any excessive earnings that might occur during the term of the stipulation. This provision provides some measure of protection for the ratepayers. For this reason, we find that no money shall be placed subject to refund at this time.
>
> Based on the foregoing, it is
>
> . . . . ORDERED that no money shall be placed subject to refund at this time."

Rate Case Order, Ex. B, p. 6. The Hospital Association would now have the Commission throw out both its Rate Case Order and Settlement Order like yesterday's trash and enter a completely contradictory order in this separate proceeding. *See Department of HRS v. Barr,* 359 So. 2d 503 (Fla. 1st DCA 1978) (improper to attack final agency decision through collateral proceedings).

Because the Commission has already considered the issues raised by the Petition and made its final decision, there is no occasion even to consider the Petition. Moreover, it is not as if the Hospital Association is raising new points that were not taken into account in the Commission's prior decision. The issues of (i) Entergy merger costs and related executive compensation, (ii) FMPA settlement costs, (iii) recovery of transmission costs related to the formation of GridFlorida (iv) the range of FPL's actual earnings in relation to the reduced range set in the Settlement Order, and (v) the implications of moving to a deregulated wholesale generation market were all expressly considered by the Commission in entering the Rate Case Order. *See id.* at 2. These same issues form the primary factual underpinnings of the Petition.

Stated plainly, the Petition raises nothing new. The Commission's prior orders should therefore be honored and the Petition dismissed.

III. THE TERMS OF THE SETTLEMENT ORDER PROVIDE THE EXCLUSIVE MEANS TO DETERMINE FPL'S RATES FOR THE PERIOD AT ISSUE IN THE PETITION.

A. The Settlement Order Is Final Agency Action Which There Is No Valid Basis to Overturn.

The Petition is a collateral attack on both the Rate Case Order, and, more fundamentally, the Settlement Order upon which it relies. The Settlement Order was

entered in Docket No. 990067-EI, in response to a petition by Public Counsel to initiate a full revenue requirements rate case for FPL. Before the rate case went to hearing, however, the parties agreed to settle on the terms set forth in the Stipulation and Settlement, attached hereto as Exhibit D (the "Stipulation"). The settlement was expressly contingent upon approval of the Stipulation in its entirety by the Commission, which approval was granted upon due consideration. Stipulation, Ex. D, at ¶10. It is well-settled that official approval of a settlement by an agency constitutes a final order, and is final agency action. *State, Dep't of Business Regulation, Div. of Fla. Land Sales, Condominiums and Mobile Homes v. S.K. Cutlip, Inc.*, 484 So.2d 1378, 1379 (Fla. 2d DCA 1986). Accordingly, the Settlement Order became final and unappealable thirty days after it was entered. § 120.68(2)(a), Fla. Stat.

The Stipulation adopted in the Settlement Order represented a compromise of the various parties' interests. It required FPL, *inter alia*, to lower its authorized return on equity ("ROE"), to make an immediate base rate reduction of $350 million, to make further refunds to customers in the event that its revenues exceeded certain thresholds (the "revenue-sharing mechanism"), to observe limits on the use of adjustment clauses, to recover certain cost-of-capital items, and to refrain from initiating or supporting any rate-increase request during the Stipulation's term. *Stipulation*, Ex. D, at ¶¶3-6. In exchange, FPL was protected against rate-decrease proceedings during the Stipulation's term, and the revenue-sharing mechanism was to be substituted for traditional "rate case" reviews of expenses, investment and financial results of operations. *Id.* at ¶6. The Stipulation expressly recognized that, as a result:

> [t]he achieved return on equity may, from time to time, be outside the authorized range and the sharing mechanism herein described is intended to be the appropriate and exclusive mechanism to address that circumstance.

Id., at ¶4.

On March 10, 1999, the parties to the Stipulation filed a Joint Motion for Approval of Stipulation and Settlement with the Commission. The Commission staff carefully reviewed the Stipulation and issued its recommendation on March 15, 1999, to approve the Stipulation (the "Staff Recommendation"; a copy is attached hereto as Exhibit E). In recommending approval of the Stipulation, the staff recognized that:

> The Stipulation will cause the Commission to alter its traditional viewpoint concerning ROE and excess earnings. ... With the [revenue] sharing mechanism, FPL could earn above the top of its authorized range for ROE, 12.00%, ...

Staff Recommendation, Ex. E, at 6. At the March 16, 1999, agenda conference, the Commission considered the Staff Recommendation and voted to approve the Stipulation. The Settlement Order was issued on March 17, 1999. In the Settlement Order, the Commission found that the Stipulation "provides immediate and substantial benefits for customers of [FPL]" and "[t]herefore, we find that the Stipulation should be approved." *Settlement Order*, Ex. C, at 1.

The time for reconsideration or judicial review of the Settlement Order has long since passed. It is a final order of the Commission and not subject to collateral attack as the Hospital Association seeks to do here. As stated in *Gulf Coast Electric Co-Op, Inc. v. Johnson*, 727 So.2d 259, 265 (Fla. 1999),

> The doctrine of decisional finality provides that there must be a "terminal point" in every proceeding both administrative and

> judicial, at which the parties and the public may rely upon a decision as being final and dispositive of the rights and issues involved therein. ... Once a decision has become final for these purposes, it may be modified only if there is a significant change in circumstances or a great public purpose is served by the modification.

(Citations omitted). The "terminal point" of the 1999 rate proceeding was clearly reached when the Commission issued the Settlement Order approving the Stipulation, and the time for challenging that order passed.

Now, two years later, the Hospital Association invites the Commission to disregard the finality of the Settlement Order and act contrary to both it and the recent Rate Case Order, based on the claim that FPL is earning outside its authorized rate of return. But this allegation, even if true, would not warrant modifying the Settlement Order. In view of the explicit recognition in both the Stipulation and the Staff Recommendation that FPL might earn beyond the top of its authorized return, and that this would be addressed exclusively through the revenue sharing provisions in the Stipulation, the Hospital Association can hardly claim that there exists the sort of changed circumstance that would warrant disturbing the finality of the Settlement Order.[6]

There likewise would be no "great public interest" served by disavowing the negotiated resolution embodied in the Stipulation. As the then-Chairman of the

[6] It is worth noting as well that the "authorized return" to which the Hospital Association wants to compare FPL's earnings was lowered from its previous level by the Stipulation. FPL agreed to this reduction with the express understanding that, during the term of the Stipulation, FPL might earn above the authorized return without being subject to an earnings-based rate adjustment. *See Stipulation*, Ex. D, at ¶4. The Hospital Association cannot have it both ways, applying the lowered rate of return to which FPL agreed in the Stipulation while at the same time ignoring the companion agreement that the authorized return would not be used during the term of the Stipulation to reduce rates.

Commission observed at the March 16, 1999, agenda conference when the Stipulation was approved:

> I think staff put the ball in play, and Jack Shreve I think scored a touchdown for Florida ratepayers today, and I think he is to be commended. ... Clearly this is good for Florida ....

Transcript of March 16, 1999, agenda conference, a copy of which is attached hereto as Exhibit F, at 40. Nothing is offered by the Hospital Association to suggest why a stipulation that was "clearly ... good for Florida" when the Commission approved it in March 1999 has now somehow become so contrary to the public interest that it must be disavowed.

B. As retail customers of FPL, the members of the Hospital Association were fully represented in Docket No. 990067-EI by the Office of Public Counsel.

For the foregoing reasons, the Settlement Order is final agency action that may not properly be disturbed in this collateral proceeding. That is true regardless of whether the Hospital Association and its members were or were not represented as parties in the proceeding where the Settlement Order was entered (Docket No. 990067-EI). But in fact, the Hospital Association's members were fully and adequately represented in that proceeding. Its attempt to disavow the Settlement Order therefore fails factually as well as legally.

The Hospital Association makes a specious distinction between the four direct signatories to the Stipulation, upon whom it concedes that the Stipulation is binding, and the roughly four million FPL customers who were not direct signatories to the Stipulation and, according to the Petition, are therefore not bound. What the Petition fails to acknowledge is that all of the signatories to the Stipulation other than FPL were acting in

a representative capacity. Some or all of those signatories represented the interests of the Hospital Association's members.

At a minimum, its members were represented by the Public Counsel, who is statutorily authorized to "represent the general public of Florida before the Florida Public Service Commission." Section 350.061(1), Fla. Stat. Consistent with this statutory mandate, when Public Counsel petitioned to initiate Docket 990067-EI, it stated that: "Public Counsel is filing this petition on behalf of the retail customers of FPL...." *Petition By The Citizens Of The State Of Florida*, Docket No. 990067-EI, January 20, 1999, par. 2. When Public Counsel signed the Stipulation, it was likewise acting on behalf of FPL's retail customers. This necessarily included the Hospital Association's members, for whom the association has sought to intervene in Docket No. 001148-EI as FPL retail customers. *See* Hospital Association Petition to Intervene in Docket No. 001148 at ¶6. The members of the Hospital Association are bound by the Settlement Order and Stipulation to the same extent as every other FPL retail customer.

Furthermore, the petition to intervene in Docket No. 990067-EI filed by the Coalition for Equitable Rates asserts that the Coalition represented at least one health care organization that may have some or all of the hospitals that the Hospital Association represents as members: the "Florida Health Care Association" ("FHCA"). In any event, regardless of whether these hospitals are members of FHCA, the Coalition's representation of FHCA shows that hospital interests were protected not just by the Public Counsel's broad-based representation of the general public but also by an organization specifically attuned to the interests of the health care industry.

C. It would be astoundingly bad policy for the Commission to ignore its prior orders and set aside a settlement it had previously approved.

Finally, putting aside both the impropriety of having a parallel docket to decide issues that logically belong in Docket 001148-EI, as well as the multitude of reasons why the Hospital Association is not *entitled* to the relief they seek, the Hospital Association's Petition should be denied for the additional, compelling reason that granting it would create extremely unfavorable precedent and policy. The Hospital Association's Petition asks the Commission to disavow -- to FPL's disadvantage -- a rate compromise that has benefitted FPL's customers enormously since its inception two and a half years ago. Granting this one-sided request would chill the prospects for future innovative ratemaking settlements, not just with respect to FPL, but for all utilities the Commission regulates.

As discussed above, the Stipulation resolved a Commission rate proceeding initiated by Public Counsel on behalf of FPL's retail customers. FPL, Public Counsel and the other parties who had intervened in that proceeding concluded among themselves that settling on the terms embodied in the Stipulation better served their mutual interests than litigating the proceeding to conclusion. Each party compromised positions that it otherwise would have advocated. But even after the parties agreed that the Stipulation was a mutually satisfactory balancing of their interests, the Commission's approval of the Stipulation was required.

In approving the Stipulation, the Commission was exercising its authority to establish just and reasonable rates under Chapter 366. If the Commission had determined that the Stipulation was inconsistent with the proper exercise of that authority, it would not -- could not -- have approved it. The Stipulation provided FPL an incentive to be more efficient and

reduce its O&M expenditures by allowing FPL to share certain revenues with its customers. It also exposed FPL to the risk of underearning with no prospect for rate relief during the term of the Stipulation, if expenses rose more than expected. In other words, the Stipulation was a form of incentive ratemaking that the Commission embraced and approved. Moreover, as Public Counsel pointed out at the agenda conference where the Stipulation was approved, the Stipulation's focus on revenues rather than on earned return had the benefit of simplicity and avoided potential disputes about how to calculate earned return. *See* Ex. F, at 36. In short, the Commission did not turn a blind eye to its rate making duties under Chapter 366 when it approved the Stipulation; it exercised those duties in a creative way, to the mutual benefit of FPL and its customers.

The Hospital Association now asks the Commission to turn its back on that portion of the Stipulation that was to benefit FPL, after FPL has already reduced rates and made additional rate refunds to customers pursuant to the revenue sharing mechanism of the Stipulation. In short, the Hospital Association wants all the benefits that the Stipulation offers customers, but would excise those portions that represent the benefits and incentives given to FPL in exchange.

And the benefits conferred on FPL's customers by the Stipulation have been very substantial indeed. When the Stipulation was approved, FPL immediately effected a rate reduction that resulted in FPL's foregoing $350 million in revenues for the first year. Because of customer growth, the revenues foregone by FPL in subsequent years of the Stipulation have increased. By the end of the Stipulation's three-year term, FPL will have foregone revenues as a result of the Stipulation totaling in excess of $1 billion. In addition, without ever having to initiate a proceeding to address overearnings, as a result of the

revenue sharing mechanism FPL customers received a refund of $22 million for the first year of the Stipulation, received another refund of $105 million for the second year, and stand to receive yet another refund for the third year.

It would be grossly improper for the Commission to renounce the Stipulation it had approved. *Palm Springs General Hospital, Inc. v. Health Care Cost Containment Board,* 560 So.2d 1348, 1349 (Fla.3rd DCA 1990) (improper for agency to renounce approved settlement agreement). The Commission should seriously consider the chilling effect that disavowing the Stipulation would have. It would substantially discourage -- if not outright halt -- the practice of parties before the Commission reaching settlements as a cost-effective alternative to litigation. It would also effectively prevent any mediation of disputes before the Commission, as the parties would never know if their mediated agreement would stand. If all the parties to a Commission-approved settlement cannot depend upon receiving the benefits to which they are entitled thereunder, they will have little or no incentive to accept voluntarily any detriments that the settlement might entail. An especially important casualty of this wariness to settle could be innovative forms of ratemaking. Almost by definition, innovative ratemaking requires consent of the parties. But if utilities cannot reliably depend on receiving the benefits as well as the detriments of innovative ratemaking arrangements, then they will have little reason to pursue them.

Conclusion

For the foregoing reasons, the Complaint of South Florida Hospital and Healthcare Association against FPL should be dismissed with prejudice.

Respectfully submitted,

Steel Hector & Davis LLP
215 South Monroe Street - Suite 601
Tallahassee, Florida 32301

Attorneys for Florida Power & Light Company

By: Charles A Guyton
Matthew M. Childs, P.A.
John T. Butler, P.A.
Charles A. Guyton
Gabriel E. Nieto

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FPL's Motion to Dismiss was served by hand delivery (*) or facsimile and U.S. Mail this 31st day of July 2001 to the following:

William C. Keating. IV *
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Mark F. Sundback
Kenneth L. Wiseman
Andrews & Kurth, LLP
1701 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006

George E. Humphrey
Andrews & Kurth, LLP
600 Travis
Suite 4200
Houston, TX 77002-3090

Jack Shreve, Esquire
John Roger Howe, Esquire.
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400

John McWhirter
McWhirter, Reeves, et. al.
PO Box 3350
Tampa, FL 33601-3350

Ronald LaFace
Sean Frazier
Greenberg Traurig, PA
101 East College Avenue
Tallahassee, FL 32301

By: _____
Charles A. Guyton

MIA2001/38502-1

ANDREWS & KURTH L.L.P.
ATTORNEYS

HOUSTON
WASHINGTON, D.C.
DALLAS
LOS ANGELES
NEW YORK
THE WOODLANDS
LONDON

1701 PENNSYLVANIA AVENUE, N.W.
SUITE 300
WASHINGTON, D.C. 20006-5805

TELEPHONE 202 662 2700
FACSIMILE 202.662 2739

MARK F. SUNDBACK
DIRECT 202 662 2755

EMAIL ADDRESS
MSUNDBACK@AKLLP.COM@AKLLP.COM

July 5, 2001

Via Federal Express

Ms. Blanca S. Bayo
Commission Clerk
Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida Transco"), and their effects on retail rates,
Docket No. 001148-EI

Dear Ms. Bayo:

Enclosed for filing in the above referenced docket are the original and fifteen (15) copies of South Florida Hospital and Healthcare Association, *et al.* (the "Hospitals") Request for Clarification, Or In The Alternative, Reconsideration. Also enclosed is a 3½" diskette in Word format, and an extra copy of the filing to be date stamped and returned to us in the enclosed self-addressed envelope.

Please do not hesitate to contact the undersigned if you have any questions regarding the above.

Very truly yours,

Mark F. Sundback

Mark F. Sundback
An Attorney For the Hospitals

Enclosures

BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION

In re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida transco"), and their effect on FPL's retail rates)	**§**	**Docket No. 001148-EI Filed July 5, 2001**

REQUEST OF SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION, *ET AL.* FOR CLARIFICATION, OR IN THE ALTERNATIVE, RECONSIDERATION

South Florida Hospital and Healthcare Association ("SFHHA") and individual healthcare facilities supporting this effort designated in their motion to intervene in the captioned docket (collectively with the SFHHA, the "Hospitals"), by and through their undersigned counsel, and pursuant to Rule 25-22.060 of the Florida Administrative Code, hereby respectfully request clarification, or in the alternative, reconsideration, of Order No. PSC-01-1346-PCO-EI issued June 19, 2001 in the captioned docket ("June 19, 2001 Order") as described below. The Hospitals request clarification of statements contained in the June 19, 2001 Order involving a Stipulation (the "Stipulation") entered into during 1999 by Florida Power & Light Company ("FP&L"), the Florida Industrial Power Users Group ("FIPUG") the Coalition for Equitable Rates (the "Coalition"), and the Office of Public Counsel ("OPC" or "Public Counsel"). The Stipulation is attached hereto as Appendix A.

I.
PORTION OF THE JUNE 19, 2001 ORDER AT ISSUE

The Commission's June 19, 2001 Order reviews the substantial evidence demonstrating that FP&L is over-earning. *See* June 19, 2001 Order, mimco at p. 3.

Indeed, FP&L did not take serious issue with this conclusion at the Commission's May 15, 2001 meeting at which FP&L's over-earnings were discussed. The June 19, 2001 Order reacted to this finding by attempting to balance, on one hand, the rights of parties signing the Stipulation, and on the other, the rights of entities that did not sign the Stipulation, were not parties to the Stipulation and did not agree to the provisions in the Stipulation. Particularly, the last paragraph of the "discussion" section of the June 19, 2001 Order observes that

> Although we are not a party bound by its terms, we did approve the Stipulation in Order No. PSC-99-0519-AS-EI. One provision of the stipulation provides that the revenue sharing plan is to be the parties' "exclusive mechanism" to address any excessive earnings that might occur during the term of the stipulation. This provision provides some measure of protection for the ratepayers. For this reason, we find that no money shall be placed subject to refund at this time.

June 19, 2001 Order, mimeo at p. 6.

II.
REQUESTED CLARIFICATION

The last paragraph of the discussion section of the June 19, 2001 Order is ambiguous and would benefit from clarification. Given that the June 19, 2001 Order was not the product of a complaint by a participant, much less a participant that was not a party to the Stipulation, the June 19, 2001 Order appears to suggest that at least for those entities that *were* parties to the Stipulation, the mechanism by which their base rates were to be adjusted would be limited to the revenue sharing plan established in Article 6 of the Stipulation; in contrast, an entity "not a party bound by . . . terms" of the Stipulation (*e.g.*, the Commission) has, by definition, not agreed to make the revenue sharing plan the sole

mechanism by which base rates may be reduced. Such an interpretation gives effect to Article 5 of the Stipulation which carefully defined those entities whose rights to seek base rate reductions were to be circumscribed. Article 5 provides in pertinent part:

> *OPC, FIPUG and the Coalition* will neither seek nor support any additional reduction in FPL's base rates and charges [during a three year period]. [Emphasis added.]

This interpretation would give effect to the Stipulation's provisions by and among the parties to that Stipulation, while not attempting to impose upon non-parties forfeitures of rights which the Stipulation, by its express terms, did not apply to entities aside from "OPC, FIPUG and the Coalition." If the Commission intended this result, the Hospitals would respectfully request clarification confirming this point; in that case, the balance of this pleading is mooted, and reconsideration is not necessary.

III.
ALTERNATIVE RECONSIDERATION REQUEST

However, if the last paragraph of the "discussion" section of the June 19, 2001 Order is interpreted to make a determination with respect to the rights of entities that were not parties to the Stipulation and that were not, by the express terms of the Stipulation, prevented by Article 5 of the Stipulation from seeking relief, then the Hospitals respectfully request reconsideration. Such a disposition would be contrary to essential requirements of law, arbitrary and capricious, an effort to change the express terms of the Stipulation, and unsupported by substantial competent evidence – in fact, it would ignore substantial competent evidence of FP&L's over-earnings.

The Stipulation was drafted so that "parties" to it were bound. When the Stipulation sought to preclude entities from seeking reductions in base rates by means aside from the revenue-sharing plan, it precisely identified the entities so precluded. The Stipulation by its terms was agreed to by four entities, no more. The Commission approved the Stipulation after repeatedly noting that it could not be stripped of its statutory jurisdiction by participants' contracts, and following the statement by one of the Stipulation's sponsors to the Commission that "We can bind ourselves, but we're not trying to change what your [*i.e.*, the Commission's] authority is."[1]

A.

According to FP&L, "FP&L's last full rate proceeding was 1984" (1999 10-K, Appendix B hereto), based upon data from periods before 1984. In 1999, the OPC requested a full revenue requirements rate case for FP&L, and the FIPUG and the Coalition intervened. In resolving the request, the Stipulation was entered into by the OPC, FIPUG, the Coalition and FP&L.[2] FP&L carefully noted in its disclosure materials to investors (which can create significant liability to shareholders if misleading) that the Stipulation "states that Public Counsel, FIPUG and [the] Coalition will neither seek nor support any additional base rate reductions during the three year term of the agreement unless such reduction is initiated by FP&L" (1999 Form 10-K, Appendix B hereto).

The Stipulation's actual language could not be more precise:

---

1 Docket No. 990067-EI, Tr. at p. 37:7-8 (March 16, 1999).

2 The Hospitals were not parties to the 1999 Stipulation.

> *OPC, FIPUG and the Coalition* will neither seek nor support any additional reduction in FP&L's base rates [during a three year period].

Stipulation, Article 5, second sentence; emphasis added.

The Stipulation's prefatory language references "the Parties to this Stipulation," who are the entities that "stipulate and agree" to the Stipulation's operative provisions (Stipulation, fourth "WHEREAS" clause and clause commencing "NOW THEREFORE"). In case there was any room for doubt, the Stipulation again defines parties by reference to entities signing the Stipulation (*see* Stipulation signature page), which consists of the four entities identified in Article 5 of the Stipulation (*i.e.*, FIPUG, OPC, the Coalition and FP&L).

The Stipulation does not purport to foreclose the rights of entities that are *not* signatories to seek changes in rates. The Stipulation is quite specific in identifying those entities which are precluded from seeking alternative base rate reductions -- they are the parties to the Stipulation: People's Counsel, FIPUG, the Coalition and FP&L. No *party* to the Stipulation can seek to reduce base rates by an alternative means, and it was *those parties* that stipulated and agreed to the revenue sharing plan as the exclusive means of receiving reductions in base rates during the term of the Stipulation. Thus, when entities were to be precluded from further rate relief, the Stipulation carefully identified them.

Against this backdrop, the Commission approved the Stipulation on March 17, 1999. The Commission clearly is at pains to note that it is not a party to the Stipulation, and therefore is not bound by it. The Commission's discussion of the Stipulation in the June 19, 2001 Order observed that "we are not a party bound by its terms" (*mimeo* p. 6).

For that matter, neither the Hospitals nor other non-signatories to the Stipulation were parties to the Stipulation. The Stipulation is very careful to note that it is only "OPC, FIPUG and the Coalition" that have contractually relinquished rights to "seek [or] support any additional reduction in FPL's base rates . . . ." The Commission should honor the careful contract drafting undertaken by, *inter alia*, FP&L which clearly recognized the limited scope of parties agreeing to sign on to the Stipulation, as well as the precise designation of those entities forbidden from seeking to reduce base rates by means aside from the revenue sharing mechanism.

B.

When customers seek reductions to rates found to be excessive, the mandate of the Commission under Florida law is unequivocal. "All rates and charges made, demanded of, [and] received . . . shall be fair and reasonable." Section 366.03, Florida Statutes. "Whenever the Commission . . . shall find the rates . . . collected by any public utility . . . are . . . excessive, . . . the Commission *shall* . . . fix the fair and reasonable rates to be charged." Section 366.07 (emphasis added). Upon a finding of excessive rates, the Commission shall "determine just and reasonable rates" under lawful procedures. Section 366.6(2), Florida Statutes. Thus, the Commission is directed by Florida's statutes to undertake action upon a finding that rates do not correspond to the statutory scheme. Any other disposition would be contrary to the essential requirements of State law. Additionally, unlike many other regulatory schemes, the Florida statutory framework details criteria for determining whether a utility is over-earning. *See* Section 366.071, Florida Statutes.

The Commission has repeatedly emphasized, consistent with Florida law, that it cannot be precluded by a settlement from exercising its jurisdiction under the State's statutes. In one proceeding, involving a multi-year program previously approved by the Commission,

> Southern Bell argued that, in approving the parameters of the Plan, we committed to leave the Plan as is, absent some precipitous change in circumstances. Several parties had argued that, because the cost of equity capital had fallen, certain amounts of revenue should be held subject to refund, pending the outcome of the upcoming rate case. We concluded that regardless of the Plan's silence on whether it could be modified due to changes solely in the cost of equity capital and regardless of our prior approval of the Plan, we were not precluded from acting, if the public interest so required. See Order No. PSC-92-0524-FOF-TL, issued June 18, 1992.
>
> The Commission, even if it so desired, cannot be bound to a specific course of action through the approval of a stipulation. As we stated in Docket No. 890216-TL:
>
> [W]e do not possess the legal capacity of a private party to enter into contracts covering our statutory duties. Indeed, we cannot abrogate -- by contract or otherwise -- our authority to assure that our mandate from the Legislature is carried out. As a result, we may not bind the Commission to take or forego action in derogation of our statutory obligations.
>
> See Order No. 22352, issued December 29, 1989.
>
> The parties are without authority to confer or preclude our exercise of jurisdiction by agreement. In our view, any such provisions in the Settlement are not fatal flaws; they are simply unenforceable against the Commission and are void ab initio. The parties cannot give away or obtain that for which they have no authority.

Order No. PSC-94-0172-FOF-EI at pages 5, 6. Indeed, here the Stipulation is only among the four named signatories, and no others; thus, the Stipulation does not affect the Commission's jurisdiction as to others.

This point is well-illustrated by the Staff Memorandum involving the 1999 Stipulation, which noted:

> *The stipulation binds the parties, and not the Commission.* The Commission remains able to utilize during the term of the agreement, all powers explicitly and impliedly granted by Chapter 366, Florida Statutes. This includes the ability to determine that the rates charged by FPL are no longer fair, just, and reasonable, and to change those rates. *This also includes the ability to order an interim change in rates* [emphases added].

Staff Memorandum, *mimeo* p. 10 (Appendix C hereto). The Commission, in approving the Stipulation, reiterated that it was not sacrificing its jurisdiction. *See, e.g.*, Docket No. 990067-EI Tr. at p. 38:3-7; p. 39:13-20; p.37:7-11 (March 16, 1999 (Appendix D hereto)). One of the sponsors of the Stipulation emphasized to the Commission that "[w]e can bind ourselves, but we're not trying to change what your authority is." The Commission's Chairman responded that "I don't think anyone disagrees with that . . . ." Docket No. 990067-EI, Tr. 37:7-11 (March 16, 1999 (Appendix D hereto)).

In its June 19, 2001 Order, the Commission emphasized that "[our] over-arching concern is that the public interest be protected. It is our responsibility to ensure that the company's retail rates are at an appropriate level." June 19, 2001 Order *mimeo* at p. 6. Whatever the merits of these issues might be before other jurisdictions, it is clear that under Florida law, the Commission cannot contract away its statutorily-mandated jurisdiction. Given the overwhelming record demonstrating FP&L's excessive earnings, it is appropriate and indeed legally necessary to exercise the Commission's inherent authority to reduce FP&L's rates with respect to the Hospitals. To do otherwise would be to act without substantial competent evidence and in fact would ignore substantial

competent evidence relied upon in the June 19, 2001 Order and provided, in the first instance, by FP&L.

IV.
CONCLUSION

WHEREFORE, the Hospitals request clarification as requested in Part II hereof. In the alternative, the Hospitals respectfully request reconsideration of the June 19, 2001 Order because it is arbitrary and capricious, in conflict with essential requirements of law, contrary to, and without basis in substantial competent evidence, and would do violence to the terms of the underlying Stipulation, as outlined in Part III.

Mark F. Sundback
Kenneth L. Wiseman
Mark F. Sundback
Andrews & Kurth L.L.P.
1701 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006
Ph. (202) 662-2700
Fax. (202) 662-2739

George Humphrey - MFS
George E. Humphrey
Florida Reg. No. 0007943
Andrews & Kurth L.L.P.
600 Travis, Suite 4200
Houston, Texas 77002-3090
Ph. (713) 220-4200
Fax. (713) 220-4285

Attorneys for the Hospitals

July 5, 2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by first class mail to the following parties of record and interested parties, this 5th day of July, 2001.

Black & Veatch
Myron Rollins
P.O. Box 8405
Kansas City, MO 64114
Phone: 913-458-7432
Fax: 913-339-2934

Colonial Pipeline Company
Jennifer May-Brust, Esq.
945 East Paces Ferry Road
Atlanta, GA 30326
Phone: 404-841-2376
Fax: 404-841-2315

Day, Berry Law Firm
G. Garfield/R. Knickerbocker/S. Myers
CityPlace I
Hartford, CT 06103-3499
Phone: 860-275-0100
Fax: 860-275-0343

Dynegy Inc.
David L. Cruthirds
1000 Louisiana Street, Suite 5800
Houston, TX 77002-5050
Phone: 713-507-6785
Fax: 713-507-6834

Florida Electric Cooperatives Association, Inc.
Michelle Hershel
2916 Apalachee Parkway
Tallahassee, FL 32301
Phone: 850-877-6166
Fax: (850) 656-5485

Florida Industrial Cogeneration Assoc.
c/o Richard Zambo, Esq.
598 S.W. Hidden River Ave.
Palm City, FL 34990
Phone: 561-220-9163
Fax: 561-220-9402

Florida Industrial Power Users Group
c/o John McWhirter, Jr.
McWhirter Reeves
400 North Tampa Street
Suite 2450
Tampa, FL 33601-3350
Phone: 850-222-2525
Fax: (850) 222-5606

Florida Power & Light Company
Mr. William Walker, III
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859
Phone: (850) 224-7517
Fax: (850) 224-7197

Foley & Lardner Law Firm
Thomas J. Maida/N. Wes Strickland
300 East Park Avenue
Tallahassee, FL 32301
Phone: 850-222-6100
Fax: (850) 224-3101

Gray, Harris & Robinson, P.A.
Kelly B. Plante, Esq.
225 South Adams Street, Suite 250
Tallahassee, FL 32301
Phone: 850-222-7717
Fax: (850) 222-3494

Gray, Harris & Robinson, P.A. (Orl)
Thomas A. Cloud
P.O. Box 3068
Orlando, FL 32802-3068
Phone: (407) 843-8880
Fax: (407) 244-5690

Diane K. Kiesling
Landers & Parsons, P.A.
310 West College Avenue (32301)
P.O. Box 271
Tallahassee, Florida 32302
Phone: (850) 681-0311
Fax: (850) 224-5595

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida transco"), and their effect on FPL's retail rates.	DOCKET NO. 001148-EI ORDER NO. PSC-01-1346-PCO-EI ISSUED: June 19, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER REQUIRING THE FILING OF MINIMUM FILING REQUIREMENTS

BY THE COMMISSION:

BACKGROUND

This docket was opened on August 15, 2000, to review Florida Power & Light Company's (FPL or the company) proposed merger with Entergy Corporation (Entergy), the formation of a regional transmission organization (RTO), and their effects on FPL's rates and earnings. On April 2, 2001, FPL Group, Inc. announced that the agreement to merge with Entergy had been terminated. The proposed transco, GridFlorida, has been approved by the Federal Energy Regulatory Commission (FERC) and is scheduled to become operational by the end of the year.

At the current time, FPL is operating under a three year revenue sharing plan that was part of a stipulation with the Office of Public Counsel, the Florida Industrial Power Users Group, and

the Coalition for Equitable Rates. The stipulation was approved in Order No. PSC-99-0519-AS-EI, issued March 17, 1999, in Docket No. 990067-EI. In addition to setting a revenue cap, the stipulation provided for a $350 million annual rate reduction, a reduction in the authorized midpoint for return on equity (ROE) from 12% to 11%, the discretionary amortization of up to $100 million annually to reduce nuclear and/or fossil production plant and various other items. As a result of the revenue cap, FPL refunded $22.8 million during 2000 and expects to refund in excess of $87.8 million, plus interest, during June 2001. The revenue sharing plan ends on April 14, 2002.

Several events have occurred recently that impact the electric industry in Florida. In July, 2000, Governor Bush created the Energy 2020 Study Commission (Energy Commission), which has been charged with proposing an energy plan and strategy for Florida over the next 20 years. The Energy Commission filed an Interim Report to the Legislature and the Governor in December, 2000, which included proposed legislation designed to move Florida to a deregulated wholesale energy market. That proposed legislation called for a base rate cap on retail rates during a transition period. During the recent legislative session, there were concerns expressed about the earnings level of the investor-owned companies, the value of the generation and transmission assets, and whether current base rates accurately reflect cost.

In addition, the utility is involved in the establishment of GridFlorida, a regional transmission organization (RTO) formed in response to an order issued by the Federal Energy Regulatory Commission (FERC). This RTO will have a significant impact on the investment and expenses of the utility in the future. Retail rates, which currently include a cost component to recover transmission facility costs, must be reconciled with the removal of the transmission costs and the imposition of new wholesale transmission rates charged by GridFlorida.

In light of all of these events, we believe it is necessary to initiate a base rate proceeding to address the level of FPL's earnings and to assure appropriate retail rates are implemented on a going forward basis so that appropriate benefits of the formation

of the RTO and any future restructuring of the electric market are captured for the retail ratepayer. The following discussion details our specific concerns with regard to the level of earnings of FPL.

DISCUSSION

In the Stipulation, it was explicitly recognized that, during the term of the Stipulation, FPL's "...achieved return on equity may, from time to time, be outside the authorized range...." Every month since the inception of the revenue sharing plan in April 1999, however, FPL's achieved "FPSC Adjusted" ROE has exceeded the maximum of its authorized ROE range. Over this 23 month period, FPL's achieved ROE has exceeded the 12% ROE ceiling by a range of 4 to 157 basis points through February 2001. On average during this period, FPL's reported ROE has been 49 basis points above the top of the authorized ROE range. This is a conservative figure because it does not reflect the possibility of certain adjustments related to items such as the Florida Municipal Power Agency (FMPA) settlement and executive compensation.

FPL has maintained this high level of earnings despite the imposition of the revenue cap and its related refunds, the $350 million annual base rate reduction, the $100 million discretionary production plant amortization write-off, the inclusion of a $69 million settlement with FMPA in November 1999 and the December 2000 recording of one-time costs, including substantial executive compensation expenses, of $62 million related to the failed merger with Entergy. We are concerned that, once the revenue sharing plan ends on April 14, 2002, FPL's earnings will continue to exceed its authorized maximum ROE ceiling of 12% with no protection for the ratepayers from these high earnings.

As part of FPL's current revenue sharing plan, the annual nuclear decommissioning and fossil dismantlement accruals have been capped at the 1995 prescribed levels, and FPL's depreciation rates were capped at their prescribed 1999 levels. FPL filed an updated nuclear decommissioning study at the end of 2000 which is under review. The currently approved nuclear decommissioning annual

accruals are $84,024,335 on a retail basis. The annual accruals resulting from FPL's updated decommissioning studies are $81,549,724 on a retail basis. This represents a $2,474,611 decrease in the annual accrual amount. FPL is proposing to maintain the currently prescribed annual accrual level rather than decreasing the level to the amount supported by its decommissioning studies. Under the Stipulation, the decommissioning accrual cannot be increased. If the accrual is decreased, it would increase FPL's earnings for 2001 and the remaining period of the stipulation.

Inextricably related to the assessment of earnings is the amount of common equity capital on which the ROE is measured. FPL's equity ratio, while addressed in the Stipulation, remains an ongoing concern. In Section 4 of the Stipulation, FPL agreed to cap its equity ratio at 55.83% on an adjusted basis for surveillance purposes. Although the amount is small, FPL's adjusted equity ratio has consistently exceeded this cap since March 2000. FPL's actual equity ratio, the level upon which earnings are measured, of approximately 65% continues to be well above the average equity ratio for AA-rated electric utilities. A rate proceeding will afford an opportunity to determine an appropriate equity ratio, for ratemaking purposes, after the expiration of the revenue sharing plan.

In addition to the reasons for an earnings investigation outlined above, the information contained in the rate case minimum filing requirements (MFRs) is necessary to ensure proper rate-making and cost allocations among rate classes to reflect changes that have occurred since the company's last rate case. FPL's most recent fully allocated cost of service study was filed in 1981 for a projected 1983 test year. Since that time, significant changes have taken place in the company's operations, and cost shifting among rate classes has occurred. Considering the possibility of wholesale and/or retail electric market restructuring in Florida, the availability of current cost and allocation information will be beneficial to decision makers.

As mentioned previously, the utility is involved in the establishment of GridFlorida RTO along with other electric

utilities in peninsular Florida. The planned implementation of GridFlorida is December, 2001 and the rates of the RTO are due to be filed with FERC in October, 2001. On May 11, 2001, prior to this decision, FPL, Florida Power Corporation, and Tampa Electric Company filed a Joint Motion to Establish a Generic Docket to consider the issues related to the formation of GridFlorida on an expedited basis. This Joint Motion was addressed at the May 29, 2001, agenda conference, and a separate order reflecting that decision will be issued in Dockets Nos. 001148-EI, 000824-EI and 010577-EI.

DECISION

A rate proceeding with MFRs, including a fully allocated cost study, will provide assurances that FPL's rates, on a going-forward basis, are fair, just, and reasonable. For all of the reasons stated above, we find that FPL shall be required to file MFRs by August 15, 2001 (approximately 90 days from the date of our vote on this matter). This filing will begin an eight month time period for establishing new base rates to be effective by April 15, 2002, the expiration date of the existing revenue sharing plan. We further find that a projected calendar year 2002 test year is a reasonable basis for determining future rates.

In requiring FPL to file MFRs, we are mindful that it has been in excess of 17 years since full MFRs were filed, and that the effort to make such a filing is significant. To that end, we direct our staff to meet with the utility, the other parties, and other interested persons as soon as possible. The participants are directed to identify specific issues, discuss the possibility of eliminating certain MFRs that are not necessary for the efficient processing of this case, and to discuss the logistical challenges to the utility in meeting the August 15, 2001, filing date. We recognize that the discussions undertaken pursuant to the direction of this order could result in the need for further action by the Prehearing Officer and/or the Commission. Our intent is to be flexible, while still requiring the filing of sufficient information on a timely basis.

Our over-arching concern is that the public interest be protected. It is our responsibility to ensure that the company's

retail rates are at an appropriate level. Moreover, it is our belief that information in the MFRs will assist this Commission in addressing questions from the Energy 2020 Study Commission and the Florida Legislature regarding the earnings level of FPL, appropriate base rates, and the level of potential stranded cost/investment associated with various plans for restructuring of the electric industry.

We want to be clear that this decision to initiate a rate proceeding does not foreclose the ability of the company and parties to reach a resolution of some or all of the issues involved in an earnings review. In fact, it is our belief that the information contained in the MFRs can empower parties and the Commission to reach a settlement that everyone can agree is in the public interest. However, we need to be ready to move forward to discharge our obligations in the event there is no informal resolution of the issues. The information contained in the MFRs will allow us to do that.

Although we are not a party bound by its terms, we did approve the Stipulation in Order No. PSC-99-0519-AS-EI. One provision of the stipulation provides that the revenue sharing plan is to be the parties' "exclusive mechanism" to address any excessive earnings that might occur during the term of the stipulation. This provision provides some measure of protection for the ratepayers. For this reason, we find that no money shall be placed subject to refund at this time.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company shall file Minimum Filing Requirements by August 15, 2001, based on a projected calendar year 2002 test year. It is further

ORDERED that no money shall be placed subject to refund at this time. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 19th day of June, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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 Records and Reporting, 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by the Citizens of the State of Florida for a full revenue requirements rate case for Florida Power & Light Company.	DOCKET NO. 990067-EI ORDER NO. PSC-99-0519-AS-EI ISSUED: MARCH 17, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER APPROVING STIPULATION AND SETTLEMENT

BY THE COMMISSION:

On January 20, 1999, the Office of Public Counsel (OPC) filed a Petition to "have the Florida Public Service Commission conduct a full revenue requirements rate case and establish reasonable rates and charges" for Florida Power & Light Company. The Florida Industrial Power Users Group and the Coalition for Equitable Rates have intervened in the proceeding.

On March 10, 1999, the parties filed a Joint Motion for Approval of Stipulation and Settlement together with the Stipulation and Settlement (Stipulation) in the above-referenced docket that will resolve all issues raised in OPC's Petition. A copy of the Stipulation and Settlement is attached to this Order as Attachment A and is incorporated herein by reference. Among other things, this Stipulation provides for a $350 million annual rate reduction. It provides immediate and substantial benefits for customers of Florida Power & Light Company. Therefore, we find that the Stipulation should be approved.

Exhibit A

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Stipulation and Settlement, attached to this Order as Attachment A and incorporated herein by reference, filed by the Office of Public Counsel, Florida Power & Light Company, the Florida Industrial Power Users Group, and the Coalition for Equitable Rates is approved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th day of March, 1999.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for a full revenue requirements rate case for Florida Power & Light Company	)	DOCKET NO. 990067-EI

STIPULATION AND SETTLEMENT

WHEREAS, the Office of Public Counsel of the State of Florida ("OPC") has petitioned the Florida Public Service Commission to initiate and conduct a full revenue requirements base rate proceeding for Florida Power & Light Company ("FPL"). In its Petition, the OPC, among other matters, alleges that, while long-term benefits for both FPL and its customers may have been achieved by the "Plans" approved by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI, the time has now come for the customers to share in the benefits;

WHEREAS, The Florida Industrial Power Users Group ("FIPUG") and The Coalition For Equitable Rates ("Coalition")have petitioned for and been granted leave to intervene;

WHEREAS, a base rate proceeding can be costly, time consuming, lengthy and disruptive to efficient and appropriate management and regulatory efforts; and,

WHEREAS, the Parties to this Stipulation and Settlement have undertaken to resolve the matters raised in the Petition so as to

effect a current and prompt reduction in base rates charged customers and achieve a degree of stability to the base rates and charges;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Stipulation and Settlement will become effective on the day following the vote by the Florida Public Service Commission approving this Stipulation and Settlement which will be reflected in a final Order. The starting date for the three-year term of this Stipulation and Settlement will be 30 days following the vote and will be referred to as the "Implementation Date."

2. The continued amortization and booking of expenses and other cost recognition authorized and required by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI will terminate on the day before the Implementation Date. Beginning on the Implementation Date, FPL is authorized to record an amortization amount of up to $100 million at the discretion of the Company per year for each twelve months of the term of this Stipulation and Settlement which shall be applied to reduce nuclear and/or fossil production plant in service. The amortization will be separate and apart from normal depreciation, and existing depreciation practices and resulting depreciation rates will not be adjusted, either before, during or after the term hereof to eliminate the effect of the additional amortization amount

recorded.

3. FPL will reduce its base rates by $350 million. The base rate reduction will be reflected on FPL's customer bills by reducing the base rate energy charge by .420 cents per kWh. FPL will begin applying the lower base rate energy charge required by this Stipulation and Settlement to meter readings made on and after the Implementation Date.

4. Effective on the Implementation Date, FPL's authorized return on equity range on a prospective basis will be 10.00% to 12.00% with a midpoint of 11.00% for all regulatory purposes; it being understood that during the term of this Stipulation and Settlement the achieved return on equity may, from time to time, be outside the authorized range and the sharing mechanism herein described is intended to be the appropriate and exclusive mechanism to address that circumstance. FPL's adjusted equity ratio will be capped at 55.83% as included in FPL's projected 1998 Rate of Return Report for surveillance purposes. The adjusted equity ratio equals common equity divided by the sum of common equity, preferred equity, debt and off-balance sheet obligations. The amount used for off-balance sheet obligations will be calculated per the Standard & Poor's methodology as used in its August 1998 credit report.

5. No party to this Stipulation and Settlement will request, support, or seek to impose a change in the application of any

provision hereof. OPC, FIPUG and the Coalition will neither seek nor support any additional reduction in FPL's base rates and charges, including interim rate decreases, to take effect for three years from the Implementation Date unless such reduction is initiated by FPL. FPL will not petition for an increase in its base rates and charges, including interim rate increases, to take effect before three years from the Implementation Date. Other than with respect to the environmental cost recovery clause as herein addressed, FPL will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates.

6. During the term of this Stipulation and Settlement revenues which are above the levels stated herein will be shared between FPL and its retail electric utility customers--it being expressly understood and agreed that the mechanism for earnings sharing herein established is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investment and financial results of operations. For the first 12 months beginning with the Implementation Date, FPL's retail base rate revenues in excess of $3.400 billion up to $3.556 billion will be shared between FPL and its customers on a one-third/two-thirds basis, one-third to be retained by FPL and two-thirds to be refunded to its customers. Retail base rate revenues above $3.556 billion for the first 12-month period will be refunded to FPL's customers. For the

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purposes of calculating interest only, it will be assumed that revenues to be refunded were collected evenly throughout the preceding 12-month period at the rate of one-twelfth per month. All refunds with interest will be in the form of a credit on the customers' bills beginning with the first day of the first billing cycle of the second month after the end of the applicable twelve month period. Refunds to former customers will be completed as expeditiously as reasonably possible.

7. FPL's recovery of costs through the environmental cost recovery docket will be phased out over a three-year period beginning January 1, 2000. FPL will be allowed to recover its otherwise eligible and prudent environmental costs, including true-up amounts, in 2000 up to $12.8 million. For 2001, FPL will be allowed to recover its otherwise eligible and prudent environmental costs, including true-up amounts, up to $6.4 million. For 2002, FPL will not be allowed to recover any costs through the environmental cost recovery docket. FPL may, however, petition to recover in 2003 prudent environmental costs incurred after the expiration of the three-year term of this Stipulation and Settlement in 2002.

8. During the term of this Stipulation and Settlement, accruals for nuclear decommissioning and fossil dismantlement expense will be capped at the level previously approved by the Commission in Order No. PSC-95-1531-FOF-EI in Dockets Nos. 941350-

EI and 941352-EI as amended by Order No. PSC-95-1531A-FOF-EI and Order No. PSC-95-1532-FOF-EI in Docket No. 941343-EI. In addition, the Protests or Petitions on Proposed Agency Action by FIPUG and the Coalition of Order No. PSC-99-0073-FOF-EI will be withdrawn and that Order will be made final. Thereafter, depreciation rates as addressed in Order No. PSC-99-0073-FOF-EI will not be exceeded for the term of this Stipulation and Settlement.

9. The construction costs associated with the Ft. Myers and Sanford plant repowering projects will be treated as CWIP in rate base and AFUDC will not be accrued on these projects.

10. This Stipulation and Settlement is contingent on approval in its entirety by the Florida Public Service Commission. This Stipulation and Settlement will resolve all matters in this Docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (1997). This Docket will be closed effective on the date the Florida Public Service Commission Order approving this Stipulation and Settlement is final.

11. This Stipulation and Settlement, dated as of March 10, 1999, may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signature.

Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174

Steel Hector & Davis LLP

By: _____
Matthew M. Childs, P.A.

Office of Public Counsel
111 West Madison Street
Suite 810
Tallahassee, FL 32399

By: _____
Jack Shreve

Florida Industrial
Power Users Group

John W. McWhirter, Jr., Esq.
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman
Arnold & Steen, P.A.
P. O. Box 3350
Tampa, FL 33601-3350

By: _____
John W. McWhirter

The Coalition for
Equitable Rates

Ronald C. LaFace, Esq.
Seann M. Frazier, Esq.
Greenberg, Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301

By: _____
Ronald C. LaFace

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a full revenue requirements rate case for Florida Power & Light Company.
_____/

Docket No.: 990067-EI
Filed: March 10, 1999

JOINT MOTION FOR APPROVAL OF STIPULATION AND SETTLEMENT

The Citizens of the State of Florida, through the Office of Public Counsel, the Florida Industrial Power Users Group, The Coalition for Equitable Rates, and Florida Power & Light Company jointly move the Florida Public Service Commission for entry of a final order approving the attached Stipulation and Settlement as full and complete resolution of all matters pending in this docket in accordance with Section 120.57(4), Florida Statutes (Supp. 1998).

WHEREFORE, the undersigned parties to this docket respectfully urge the Florida Public Service Commission to approve the attached Stipulation and Settlement in all respects.

DATED this 10th day of March, 1999.

Respectfully submitted,

JACK SHREVE

Office of Public Counsel
c/o The Florida Legislature
Room 812
111 West Madison Street
Tallahassee, FL 32399-1400

FOR THE CITIZENS OF THE STATE OF FLORIDA

MATTHEW M. CHILDS, P.A.

Steel Hector & Davis LLP
215 South Monroe Street
Suite 601
Tallahassee, FL 32301-1804

ATTORNEYS FOR FLORIDA POWER & LIGHT COMPANY

Exhibit B

Joseph A. McGlothlin for
JOHN W. McWHIRTER, JR.

McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P. A.
Post Office Box 3350
Tampa, FL 33601-3350

ATTORNEYS FOR THE FLORIDA
INDUSTRIAL POWER USERS GROUP

Ronald C. LaFace
RONALD C. LaFACE

Greenberg Traurig, P.A.
101 East College Avenue
Post Office Drawer 1838
Tallahassee, FL 32302

ATTORNEYS FOR THE COALITION
FOR EQUITABLE RATES

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for a full revenue requirements rate case for Florida Power & Light Company	))))	DOCKET NO. 990067-EI

STIPULATION AND SETTLEMENT

WHEREAS, the Office of Public Counsel of the State of Florida ("OPC") has petitioned the Florida Public Service Commission to initiate and conduct a full revenue requirements base rate proceeding for Florida Power & Light Company ("FPL"). In its Petition, the OPC, among other matters, alleges that, while long-term benefits for both FPL and its customers may have been achieved by the "Plans" approved by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI, the time has now come for the customers to share in the benefits;

WHEREAS, The Florida Industrial Power Users Group ("FIPUG") and The Coalition For Equitable Rates ("Coalition")have petitioned for and been granted leave to intervene;

WHEREAS, a base rate proceeding can be costly, time consuming, lengthy and disruptive to efficient and appropriate management and regulatory efforts; and,

WHEREAS, the Parties to this Stipulation and Settlement have undertaken to resolve the matters raised in the Petition so as to

effect a current and prompt reduction in base rates charged customers and achieve a degree of stability to the base rates and charges;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Stipulation and Settlement will become effective on the day following the vote by the Florida Public Service Commission approving this Stipulation and Settlement which will be reflected in a final Order. The starting date for the three-year term of this Stipulation and Settlement will be 30 days following the vote and will be referred to as the "Implementation Date."

2. The continued amortization and booking of expenses and other cost recognition authorized and required by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI will terminate on the day before the Implementation Date. Beginning on the Implementation Date, FPL is authorized to record an amortization amount of up to $100 million at the discretion of the Company per year for each twelve months of the term of this Stipulation and Settlement which shall be applied to reduce nuclear and/or fossil production plant in service. The amortization will be separate and apart from normal depreciation, and existing depreciation practices and resulting depreciation rates will not be adjusted, either before, during or after the term hereof to eliminate the effect of the additional amortization amount

recorded.

3. FPL will reduce its base rates by $350 million. The base rate reduction will be reflected on FPL's customer bills by reducing the base rate energy charge by .420 cents per kWh. FPL will begin applying the lower base rate energy charge required by this Stipulation and Settlement to meter readings made on and after the Implementation Date.

4. Effective on the Implementation Date, FPL's authorized return on equity range on a prospective basis will be 10.00% to 12.00% with a midpoint of 11.00% for all regulatory purposes; it being understood that during the term of this Stipulation and Settlement the achieved return on equity may, from time to time, be outside the authorized range and the sharing mechanism herein described is intended to be the appropriate and exclusive mechanism to address that circumstance. FPL's adjusted equity ratio will be capped at 55.83% as included in FPL's projected 1998 Rate of Return Report for surveillance purposes. The adjusted equity ratio equals common equity divided by the sum of common equity, preferred equity, debt and off-balance sheet obligations. The amount used for off-balance sheet obligations will be calculated per the Standard & Poor's methodology as used in its August 1998 credit report.

5. No party to this Stipulation and Settlement will request, support, or seek to impose a change in the application of any

provision hereof. OPC, FIPUG and the Coalition will neither seek nor support any additional reduction in FPL's base rates and charges, including interim rate decreases, to take effect for three years from the Implementation Date unless such reduction is initiated by FPL. FPL will not petition for an increase in its base rates and charges, including interim rate increases, to take effect before three years from the Implementation Date. Other than with respect to the environmental cost recovery clause as herein addressed, FPL will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates.

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Ronald C. LaFace, Esq.
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Ronald C. LaFace

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: MARCH 15, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS (SLEMKEWICZ, D. DRAPER, LEE, LESTER, MAILHOT, MAUREY, DEVLIN, SALAK)
DIVISION OF ELECTRIC AND GAS (BREMAN, TEW, WHEELER)
DIVISION OF LEGAL SERVICES (ELIAS)

RE: DOCKET NO. 990067-EI - PETITION BY THE CITIZENS OF THE STATE OF FLORIDA FOR A FULL REVENUE REQUIREMENTS RATE CASE FOR FLORIDA POWER & LIGHT COMPANY.

AGENDA: 03/16/99 - REGULAR AGENDA - DECISION ON STIPULATION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\AFA\WP\990067.RCM

CASE BACKGROUND

On January 20, 1999, the Office of Public Counsel (OPC) filed a Petition to "have the Florida Public Service Commission conduct a full revenue requirements rate case and establish reasonable rates and charges for FPL."

On March 10, 1999, the parties filed a Joint Motion for Approval of Stipulation and Settlement together with the Stipulation and Settlement (Stipulation) in the above-referenced docket that resolves the issues raised. This recommendation addresses the Stipulation and Settlement agreed upon by the parties.

Exhibit C

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the Stipulation entered into by Florida Power & Light Company (FPL), OPC, the Florida Industrial Power User Group (FIPUG), and the Coalition for Equitable Rates (the Coalition). (Attachment)

PRIMARY RECOMMENDATION: Yes. The Stipulation should be approved. (DEVLIN)

ALTERNATIVE RECOMMENDATION: No, the stipulation should not be approved. (SALAK, MAUREY, ELIAS)

PRIMARY STAFF ANALYSIS: Because of time constraints, staff did not prepare an analysis by paragraph. Instead, we have concentrated our efforts in areas that we believe need clarification and/or specific attention by the Commission.

The main reason Primary Staff recommends approval of the Stipulation is that it results in immediate and significant savings to all of FPL's ratepayers. We recognize that, at the conclusion of a full rate case, a greater rate reduction is possible. However, that would be after eight to twelve months.

In addition to the $350 million rate reduction, there is potential for further credits under the revenue sharing plan. For instance, ratepayers will be credited in the first 12 month period for two thirds of the revenue in excess of $3.4 billion. FPL's revenue for calender year 1998 was approximately $3.75 billion and therefore, the rate reduction places FPL at about where sharing begins. Any growth in revenue will benefit ratepayers. Historically, FPL's revenue has grown at about 3% a year. Absent unusual weather, it does not appear there will be any additional credits for the first year. It is more likely there will be some credits for the second and third years of the plan.

Another benefit of the plan are the caps on the environmental cost recovery clause (ECRC or the clause). This area is addressed later in the recommendation but these caps will directly benefit ratepayers since the amounts flowing through the clause are decreased. For instance, in 1998, FPL recovered approximately $22.3 million through ECRC, and, in year 2000, ECRC will be limited to $12.8 million. In year 2001, the limit is $6.4 million, and, in year 2002, no amounts can be flowed through the clause.

Primary Staff recognizes that the Stipulation will, probably result in a higher Return on Equity (ROE) for FPL, than achieved over the last five years. For the first year, we calculate that the Stipulation will result in an achieved ROE of 13.3% assuming FPL does not opt to record any "amortization amount". We expect FPL to exercise its option to amortize some amount in order to meet internal corporate goals such as a targeted level of growth in earnings. We expect to see ROEs in the upper 12% range during this plan which is excessive but does not overshadow the significant up front ratepayer benefits. In addition, the Commission maintains its authority to review FPL's earnings during the period of the Stipulation.

The following are areas that we believe need clarification and/or specific attention by the Commission. We have numbered our analyses to correspond with the section numbers in the Stipulation.

2. **Expense Plan**

The first sentence of section 2 of the Stipulation requires that the plan approved by the Commission in Docket Nos. 950359-EI and 970410-EI continue until the day before the Implementation Date. The plan approved by the Commission was set up on a calendar year basis. Staff has no objection to ending the plan on the day before the Implementation Date. However, the method for calculating the minimum required amount of expense to be recorded for the period from January 1, 1999 until the day before the Implementation Date remains to be resolved. (Mailhot)

Amortization

Section 2 of the Stipulation permits FPL to record an amortization amount of zero up to $100 million each year of the three-year term. The exact amount recorded is at the discretion of the company as long as it does not exceed $100 million annually. The amortization will be applied to reduce the nuclear and/or fossil production plant in service. Further, depreciation rates established in the future are prohibited from recognizing the effects of the amortization amounts.

Staff believes clarification is needed regarding how these amortization amounts will be recorded to reduce plant in service. From discussions with the company, it is staff's understanding that the intent is to reduce net plant in service rather than gross plant. To achieve a reduction in net plant (investment less accumulated reserve), it appears that the amortization amounts would be recorded in separate reserve accounts. This would serve

to increase the total fossil/nuclear account reserves which, in turn, will reduce net plant. However, these additional amortization amounts would not be included in the reserve component in the design of subsequent depreciation rates. The numerator of the remaining life rate formula is a measure of the net unrecovered plant at the time depreciation rates are implemented. The additional amortization amounts are not included in the numerator indicates that a greater amount of net plant remains to be recovered than is actually the case. The result is an overstated depreciation rate and resulting overstated depreciation expenses. In a word, this is accelerated depreciation. The potential end-point is that the design of depreciation rates, and the resultant rate base, will no longer reflect the matching principle, but rather, the degree of variability in the company's revenues. When depreciation rates are reset after the term of the Stipulation, failure to include the amortization in the rate calculations will result in continued accelerated depreciation. Yet, staff believes the Commission should not ignore the overall benefits of the Stipulation.

One of the basic axioms of depreciation is to match capital recovery with consumption. Staff is concerned with the concept of using economic conditions to adjust depreciation expenses which should properly be matched to service life. Previously, the Commission has approved faster write-offs of perceived reserve deficits, and of unrecovered net plant that are not life related; such actions were considered not to conflict with the matching principle.

The Stipulation essentially allows FPL the flexibility to shorten the recovery period of the fossil/nuclear plants. This is not the writing off of a perceived historical deficit, but simply accelerated depreciation, in conflict with the matching principle. Staff's concern is that each step made in this direction makes the next step easier. Further, the amortization will reduce the company's achieved earnings over the life of the Stipulation. (Lee)

3. **Allocation of Rate Reduction**

The Stipulation in section 3 specifies that the $350 million reduction in base rates will be implemented by reducing the non-fuel energy charge of each customer class by .42 cents per kilowatt hour (kWh). Consequently, the reduction is allocated among the rate classes based on their energy (kWh) consumption. This will result in a $4.25 reduction in the monthly bill for a residential customer who uses 1,000 kWh, from $75.54 to $71.29.

The proposed reduction based on energy usage differs from the method used to allocate most costs at the time FPL's base rates were determined. The bulk of the costs recovered through base rates are fixed costs which do not vary with the level of kilowatt hours (kWh) generated. As a consequence, in a rate case, most base rate costs are allocated to the rate classes on a demand, rather than an energy, basis. The bulk of FPL's fixed production and transmission plant costs were allocated based on each class's estimated contribution to the 12 monthly maximum system peaks. This method, known as the 12 Coincident Peak and 1/13 Average Demand (12 CP and 1/13 AD) method, was used to allocate most fixed production and transmission costs for each of the four major investor-owned utilities in their last full requirements rate cases.

By reducing rates on a kWh basis, high load factor classes (i.e. those whose energy use is high relative to their peak demand), such as large commercial and industrial classes, receive a proportionately larger share of the reduction than they would had the reduction been allocated in a manner similar to that used in a rate case. Conversely, lower load factor classes, such as residential and small commercial classes, receive a smaller share of the reduction.

For illustrative purposes, staff has estimated the impact on residential customers of allocating the entire $350 million reduction on a 12 CP and 1/13 AD basis, in lieu of the proposed energy basis. For the purposes of the calculation, staff has used the projected kWh sales for the period January through December, 1999. This projection was used to establish FPL's currently effective rates for the fuel and other adjustment clauses. In addition, staff has used FPL's 1997 load research estimates of the class contributions to peak demand. Based on this data, the residential customers would receive a .463 cent per kWh reduction in their non-fuel energy charge, as compared to the .420 reduction proposed. The demand allocation would result in a reduction of $4.68 on the monthly 1,000 kWh bill, a $.43 larger reduction than under the energy allocation.

Staff believes that the use of a demand allocator more closely reflects how the reduction would be distributed in a full requirements rate case. (Wheeler)

4. **Achieved Return on Equity**

In section 4, the Stipulation states:

> . . FPL's authorized return on equity range on a prospective basis will be 10.00% to 12.00% with a midpoint of 11.00% for all regulatory purposes; it being understood that during the term of this Stipulation and Settlement **the achieved return on equity may, from time to time, be outside the authorized range** and the sharing mechanism herein described is intended to be the appropriate and **exclusive** mechanism to address that circumstance. (Emphasis added.)

In Florida, the traditional use of the authorized return on equity (ROE) is to compare a utility's achieved return to its authorized return. If a utility earns above the top of the range of its authorized return, then it is overearning. The overearnings can be quantified in dollars using the top of the range of the authorized ROE. The Commission then disposes of the overearnings through rate reductions, offsets with regulatory assets, or another way.

This Stipulation will cause the Commission to alter its traditional viewpoint concerning ROE and excess earnings. With the Stipulation, the revenue sharing mechanism is the sole methodology for addressing excess earnings, i.e., earnings above the top of the authorized range. In section 6, the basics of the sharing mechanism are presented as follows:

> During the term of this Stipulation and Settlement revenues which are above the levels stated herein will be shared between FPL and its retail electric utility customers--it being expressly understood and agreed that **the mechanism for earnings sharing herein established is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investment and financial results of operations.** For the first 12 months beginning with the Implementation Date, FPL's retail base rate revenues in excess of $3.400 billion up to $3.556 billion will be shared between FPL and its customers on a one-third/two-thirds basis, one-third to be retained by FPL and two-thirds to be refunded to its customers. (Emphasis added.)

With the above sharing mechanism, FPL could earn above to top of its authorized range for ROE, 12.00%, if its revenues are below $3.400 billion. Therefore, this Stipulation requires the Commission to make a fundamental change in its traditional rate base and rate of return regulation. The Stipulation is essentially based on revenues, not earnings.

The Commission has approved sharing plans before. In Docket No. 880069-TL, the Commission approved a rate stabilization plan for Southern Bell. This plan had a sharing mechanism in which revenues were shared between customers and shareholders from the point at which earnings exceeded the top of the range for ROE. The proposed Stipulation presented by FPL, OPC, et al, **could** allow earnings to exceed the authorized ROE and be retained entirely by shareholders. This will depend on FPL's revenues and how those revenues are measured. (Lester)

The Commission has considered the impact of a stipulation on its jurisdiction in Order No. PSC-94-0172-FOF-TI, issued February 11, 1994, in Docket No. 920260-TL. In part, the Commission stated:

> The text of the Settlement contains numerous references that purport to require us to act, to refrain from acting, or to otherwise restrict our actions in some manner, or seek action for which we have no authority. Generally, such attempts to bind us to a specified future course of action by adoption of the Settlement must fail as a matter of law. See, e.g., United Telephone Company v. Public Service Commission, 496 So.2d 116, 118 (Fla. 1986), (parties to a contract cannot confer jurisdiction). Similarly, parties cannot by contract or agreement limit or require our exercise of jurisdiction.
>
> It is our statutory responsibility to ensure that Southern Bell's rates, charges, and practices are fair, just, and reasonable. See Sections 364.01(2), 364.03, and 364.14, Florida Statutes. The terms of a contract for the rendering of a service of a public nature are subject to governmental authority. State ex rel Ellis v. Tampa Waterworks Co., 48 So. 639 (Fla. 1909).
>
> When we approve a stipulation between parties, the provisions of the stipulation become part of our order. However, we cannot, by our own order, require or preclude a future Commission from carrying out its mandate. This is analogous to the principle that in adopting legislation, the legislature is not bound by actions of prior legislatures nor can it bind future legislatures.
>
> The question of the Commission being precluded from acting was last addressed in Docket No. 880069-TL. There, Southern Bell argued that, in approving the parameters of the Plan, we committed to leave the Plan as is, absent some precipitous change in circumstances. Several parties had argued that, because the cost of equity capital had fallen, certain amounts of revenue

> should be held subject to refund, pending the outcome of the upcoming rate case. We concluded that regardless of the Plan's silence on whether it could be modified due to changes solely in the cost of equity capital and regardless of our prior approval of the Plan, we were not precluded from acting, if the public interest so required. See Order No. PSC-92-0524-FOF-TL, issued June 18, 1992.
>
> The Commission, even if it so desired, cannot be bound to a specific course of action through the approval of a stipulation. As we stated in Docket No. 890216-TL:
>
> [W]e do not possess the legal capacity of a private party to enter into contracts covering our statutory duties. Indeed, we cannot abrogate -- by contract or otherwise -- our authority to assure that our mandate from the Legislature is carried out. As a result, we may not bind the Commission to take or forego action in derogation of our statutory obligations.

See Order No. 22352, issued December 29, 1989.

> The parties are without authority to confer or preclude our exercise of jurisdiction by agreement. In our view, any such provisions in the Settlement are not fatal flaws; they are simply unenforceable against the Commission and are void ab initio. The parties cannot give away or obtain that for which they have no authority. We note that, consistent with our discussion above, the parties commented during our agenda conference that there was no intent to restrict in any fashion the Commission's responsibility or legal authority.
>
> While it is clear that we cannot be precluded from carrying out our statutory mandate by approving this Stipulation, we also understand that should we find it necessary in the future to alter the regulatory provisions we are now approving, such changes could be the basis for a party to the Settlement to abrogate the prospective portions of the agreement.

Order No. PSC-94-0172-FOF-EI at pages 5, 6.

The situation addressed by the Commission in Order No. 940172 is analogous to that confronting the Commission in this docket. The stipulation binds the parties, and not the Commission. The Commission remains able to utilize during the term of the agreement, all powers explicitly and impliedly granted by Chapter 366, Florida Statutes. This includes the ability to determine that

the rates charged by FPL are no longer fair, just, and reasonable, and to change those rates. This also includes the ability to order an interim change in rates. Given that this stipulation does not limit the Commission's ability to exercise its jurisdiction to the fullest extent, and does not violate any specific provision of Chapter 366, it is consistent with the requirements of Chapter 366. (Elias)

6. **Sharing**

Section 6 of the Stipulation requires the sharing of FPL's retail base rate revenues in excess of a certain amount each year of the plan. It is staff's understanding that the retail base rate revenues are those revenues reported on the Earnings Surveillance Report as FPSC Adjusted, which was $3,757,273,247 for 1998. (Mailhot)

Capital Structure Treatment of Deferred Customer Refunds

The Stipulation does not address whether the company should include the deferred customer refunds in the capital structure. Staff believes the appropriate treatment of the deferred customer refunds should be reported in the capital structure, as a separate line item, and include the principle and interest with a cost rate at the 30-day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code. This is similar to the treatment of deferred revenues that staff is recommending for item number 9 on the March 16 agenda, Docket No. 980379-EI, Tampa Electric Company. (D. Draper)

7. **Environmental Cost Recovery Clause (ECRC)**

Section 7 of the proposed stipulation states in part that "FPL's recovery of costs through the environmental cost recovery docket will be phased out over a three-year period beginning January 1, 2000." FPL has clarified that the "phase out" is temporary. FPL will continue to petition for cost recovery both during and after the three-year period; however, the amount recovered through the clause will be the lesser of actual costs or a capped amount each year of the stipulation period. The lesser of actual costs or the capped amounts will be the basis for calculating FPL's environmental cost recovery factors for the years 2000, 2001, and 2002. Therefore, the charge per kilowatt hour for environmental compliance costs will be significantly reduced throughout the stipulation period. The terms of the proposed stipulation with respect to the ECRC are summarized in the following table:

ECRC Hearing	Set Factors for Projection Period	Recovery Cap
Fall 1999	Calendar Year 2000	$12.8 M
Fall 2000	Calendar Year 2001	$ 6.4 M
Fall 2001	Calendar Year 2002	$ 0
Fall 2002	Calendar Year 2003	No stipulation cap

In the Fall 2001 ECRC hearing; the Commission will determine whether the new environmental compliance projects proposed for 2002 are appropriate for recovery through the ECRC. According to the proposed stipulation, FPL's ratepayers will not be billed in calendar year 2002 for any of these environmental compliance costs. However, FPL clarified that it may petition for recovery of the prudently incurred costs of the new projects which were both approved in the 2001 ECRC hearing and placed into service between the expiration date of the proposed stipulation and December 31, 2002. If such a petition by FPL were granted, recovery would begin in 2003. FPL maintains that no other true-up amounts will be carried forward for purposes of setting ECRC factors for 2003. As of January 1, 2003, the caps proposed by this stipulation will no longer be applicable, and FPL may once again be allowed to recover its prudently incurred environmental compliance costs through the environmental cost recovery factor as it had prior to the stipulation. Both during and after the stipulation period, FPL will continue to participate in the annual ECRC hearings and file the appropriate ECRC testimony and schedules. (Tew, Breman)

8. **Depreciation**

Section 8 of the Stipulation caps the annual nuclear decommissioning and fossil dismantlement accruals at their currently approved levels. In addition, the protests of Order No. PSC-99-0073-FOF-EI filed by FIPUG and the Coalition will be withdrawn and that Order will be made final. The depreciation rates addressed in that Order will not be increased during the term of the Stipulation.

Rule 25-6.0436, Florida Administrative Code, requires electric companies to file depreciation studies at least once every four years. FPL has, however, filed production plant studies more frequently in the past. The Stipulation will preclude such studies being filed over the three-year term.

Additionally, FPL's next depreciation study is required by Rule 25-6.0436, Florida Administrative Code, to be submitted no later than December 26, 2001. Even though the stipulation period will not end until April 15, 2002, staff believes this should not prevent the study filing as required. The Implementation Date for new depreciation rates, however, will not be prior to April 15, 2002, per the Stipulation.

As part of Order No. PSC-99-0073-FOF-EI, the allocation of the $90 million in nuclear amortization accumulated as provided by Order No. PSC-96-0461-FOF-EI was deferred until after a final decision in Docket No. 981390-EI, In Re: Investigation into the Equity Ratio and Return on Equity of Florida Power and Light Company. At the February 16, 1999 Agenda Conference, the Commission decided to close this docket and pursue these issues in the instant docket. Accordingly, the Stipulation does not address the disposition of the $90 million nuclear amortization. This issue will be addressed in Docket No. 990324-EI.

ALTERNATIVE STAFF ANALYSIS: It is hard to argue that a rate reduction in the magnitude of $350 million is not the appropriate course of action for the Commission to take. However, Alternate Staff believes that rate reductions and other issues can and should be resolved in the form of a full revenue requirements proceeding. To allow due process, the customers' rate reductions would be delayed; however, the Commission would have a complete evidentiary record upon which to determine the best long term interests of the ratepayers.

The last full rate case for FPL was in the mid-1980's. Significant changes have occurred since that time which should be recognized for resetting rates. Due to potential changes in the industry, this may be the last opportunity to fully scrutinize FPL. Alternate Staff believes that a thorough review of each company will aid any transition that may be necessary.

A full cost of service study needs to be submitted. As discussed in the Primary Analysis, the methodology for allocating the rate reduction proposed in the Stipulation is based upon energy which will favor the large commercial and industrial classes at the expense of the residential and small commercial classes. Further, as has been seen in the deregulation of the telecommunications industry, it is imperative to assign the appropriate costs to customers and services before any regulatory changes occur.

Under the Stipulation, staff estimates of the achieved return on equity indicate that FPL will earn over 12.0%, the top of the ROE range under the Stipulation, in 1999 and that the achieved

earnings will continue to grow over the three year period. As noted in the Primary Analysis, there is no cap on earnings under the Stipulation. This provision of the Stipulation makes ROE basically meaningless for surveillance purposes. In 1998, FPL's achieved earnings were 12.6% even with FPL recording $372 million of additional expenses under the Commission Plan. The rate reduction is less than the amount of additional expenses recorded in 1998. In a rate case, rates would be set at the midpoint. Under the Stipulation, the midpoint is 11.0%. Based upon an historic or prospective view of earnings, Alternate Staff believes that greater rate reductions would be likely if the Commission proceeded to a full revenue requirements proceeding. FPL has stated in its press release that a million dollars in rate case costs will be saved by the Stipulation. A million dollars is a little over a basis point for FPL, but could lead to significant savings for the ratepayers.

The reduced amounts recovered through ECRC has been stated as a reason to endorse the Stipulation. Alternate Staff submits that during a base rate proceeding, the amounts being recovered through this clause can be rolled into base rates as indicated by Section 366.8255, Florida Statutes. The ECRC items rolled into base rates will lead to a reduction in the ECRC factor for a longer period of time than the proposal in the Stipulation.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. Absent a timely appeal of the Commission's final order, no further Commission action will be required and the docket should be closed. (ELIAS)

STAFF ANALYSIS: The Stipulation has been signed by all of the official parties of record, namely the Office of Public Counsel, the Florida Industrial Power Users Group, The Coalition for Equitable Rates and Florida Power & Light Company. The Stipulation is offered "pursuant to and in accordance with Section 120.57(4), Florida Statutes. Section 120.57(4), Florida Statutes, provides that "...informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order." The Stipulation does not require further Commission action to implement the agreement. Therefore, the docket should be closed.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for a full revenue requirements rate case for Florida Power & Light Company	))))	DOCKET NO. 990067-EI

STIPULATION AND SETTLEMENT

WHEREAS, the Office of Public Counsel of the State of Florida ("OPC") has petitioned the Florida Public Service Commission to initiate and conduct a full revenue requirements base rate proceeding for Florida Power & Light Company ("FPL"). In its Petition, the OPC, among other matters, alleges that, while long-term benefits for both FPL and its customers may have been achieved by the "Plans" approved by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI, the time has now come for the customers to share in the benefits;

WHEREAS, The Florida Industrial Power Users Group ("FIPUG") and The Coalition For Equitable Rates ("Coalition")have petitioned for and been granted leave to intervene;

WHEREAS, a base rate proceeding can be costly, time consuming, lengthy and disruptive to efficient and appropriate management and regulatory efforts; and,

WHEREAS, the Parties to this Stipulation and Settlement have undertaken to resolve the matters raised in the Petition so as to

effect a current and prompt reduction in base rates charged customers and achieve a degree of stability to the base rates and charges;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Stipulation and Settlement will become effective on the day following the vote by the Florida Public Service Commission approving this Stipulation and Settlement which will be reflected in a final Order. The starting date for the three-year term of this Stipulation and Settlement will be 30 days following the vote and will be referred to as the "Implementation Date."

2. The continued amortization and booking of expenses and other cost recognition authorized and required by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI will terminate on the day before the Implementation Date. Beginning on the Implementation Date, FPL is authorized to record an amortization amount of up to $100 million at the discretion of the Company per year for each twelve months of the term of this Stipulation and Settlement which shall be applied to reduce nuclear and/or fossil production plant in service. The amortization will be separate and apart from normal depreciation, and existing depreciation practices and resulting depreciation rates will not be adjusted, either before, during or after the term hereof to

eliminate the effect of the additional amortization amount recorded.

3. FPL will reduce its base rates by $350 million. The base rate reduction will be reflected on FPL's customer bills by reducing the base rate energy charge by .420 cents per kWh. FPL will begin applying the lower base rate energy charge required by this Stipulation and Settlement to meter readings made on and after the Implementation Date.

4. Effective on the Implementation Date, FPL's authorized return on equity range on a prospective basis will be 10.00% to 12.00% with a midpoint of 11.00% for all regulatory purposes; it being understood that during the term of this Stipulation and Settlement the achieved return on equity may, from time to time, be outside the authorized range and the sharing mechanism herein described is intended to be the appropriate and exclusive mechanism to address that circumstance. FPL's adjusted equity ratio will be capped at 55.83% as included in FPL's projected 1998 Rate of Return Report for surveillance purposes. The adjusted equity ratio equals common equity divided by the sum of common equity, preferred equity, debt and off-balance sheet obligations. The amount used for off-balance sheet obligations will be calculated per the Standard & Poor's methodology as used in its August 1998 credit report.

5. No party to this Stipulation and Settlement will request, support, or seek to impose a change in the application of any provision hereof. OPC, FIPUG and the Coalition will neither seek nor support any additional reduction in FPL's base rates and charges, including interim rate decreases, to take effect for three years from the Implementation Date unless such reduction is initiated by FPL. FPL will not petition for an increase in its base rates and charges, including interim rate increases, to take effect before three years from the Implementation Date. Other than with respect to the environmental cost recovery clause as herein addressed, FPL will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates.

6. During the term of this Stipulation and Settlement revenues which are above the levels stated herein will be shared between FPL and its retail electric utility customers--it being expressly understood and agreed that the mechanism for earnings sharing herein established is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investment and financial results of operations. For the first 12 months beginning with the Implementation Date, FPL's retail base rate revenues in excess of $3.400 billion up to $3.556 billion will be shared between FPL and its customers on a one-third/two-thirds basis, one-third to be retained by FPL and two-thirds to be refunded to its

customers. Retail base rate revenues above $3.556 billion for the first 12-month period will be refunded to FPL's customers. For the second 12-month period, retail base rate revenues in excess of $3.450 billion up to $3.606 billion will be subject to the same one-third/two-thirds sharing between FPL and its customers. Retail base rate revenues above $3.606 billion for the second 12-month period will be refunded to FPL customers. For the third and final 12-month period, retail base rate revenues in excess of $3.500 billion up to $3.656 billion will be subject to the same one-third/two-thirds sharing between FPL and its customers. Retail base rate revenues above $3.656 billion for the third 12-month period will be refunded to FPL's customers. Because implementation of this Stipulation and Settlement may not begin on the first day of a calendar month, the three resulting 12 month periods used to calculate potential refunds may each include two partial calendar months. Revenues for these two partial calendar months will be calculated by multiplying total revenues for the full calendar month by the ratio of days the Stipulation and Settlement is in effect in the partial calendar month, or days to complete the applicable twelve month period, as the case may be, to the total days in that calendar month.

All refunds will be paid with interest at the 30-day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code, to customers of record during the last three

months of each applicable 12-month period based on their proportionate share of kWh usage for the 12-month period. For purposes of calculating interest only, it will be assumed that revenues to be refunded were collected evenly throughout the preceding 12-month period at the rate of one-twelfth per month. All refunds with interest will be in the form of a credit on the customers' bills beginning with the first day of the first billing cycle of the second month after the end of the applicable twelve month period. Refunds to former customers will be completed as expeditiously as reasonably possible.

7. FPL's recovery of costs through the environmental cost recovery docket will be phased out over a three-year period beginning January 1, 2000. FPL will be allowed to recover its otherwise eligible and prudent environmental costs, including true-up amounts, in 2000 up to $12.8 million. For 2001, FPL will be allowed to recover its otherwise eligible and prudent environmental costs, including true-up amounts, up to $6.4 million. For 2002, FPL will not be allowed to recover any costs through the environmental cost recovery docket. FPL may, however, petition to recover in 2003 prudent environmental costs incurred after the expiration of the three-year term of this Stipulation and Settlement in 2002.

8. During the term of this Stipulation and Settlement, accruals for nuclear decommissioning and fossil dismantlement

expense will be capped at the level previously approved by the Commission in Order No. PSC-95-1531-FOF-EI in Dockets Nos. 941350-EI and 941352-EI as amended by Order No. PSC-95-1531A-FOF-EI and Order No. PSC-95-1532-FOF-EI in Docket No. 941343-EI. In addition, the Protests or Petitions on Proposed Agency Action by FIPUG and the Coalition of Order No. PSC-99-0073-FOF-EI will be withdrawn and that Order will be made final. Thereafter, depreciation rates as addressed in Order No. PSC-99-0073-FOF-EI will not be exceeded for the term of this Stipulation and Settlement.

9. The construction costs associated with the Ft. Myers and Sanford plant repowering projects will be treated as CWIP in rate base and AFUDC will not be accrued on these projects.

10. This Stipulation and Settlement is contingent on approval in its entirety by the Florida Public Service Commission. This Stipulation and Settlement will resolve all matters in this Docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (1997). This Docket will be closed effective on the date the Florida Public Service Commission Order approving this Stipulation and Settlement is final.

11. This Stipulation and Settlement, dated as of March 10, 1999, may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signature.

Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174

Steel Hector & Davis LLP

By: _____
Matthew M. Childs, P.A.

Office of Public Counsel
111 West Madison Street
Suite 810
Tallahassee, FL 32399

By: _____
Jack Shreve

Florida Industrial
Power Users Group

John W. McWhirter, Jr., Esq.
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman
Arnold & Steen, P.A.
P. O. Box 3350
Tampa, FL 33601-3350

By: _____
John W. McWhirter

The Coalition for
Equitable Rates

Ronald C. LaFace, Esq.
Seann M. Frazier, Esq.
Greenberg, Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301

By: _____
Ronald C. LaFace

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Petition by The Citizens of the State of Florida for a full revenue requirements rate case for Florida Power & Light Company.

DOCKET NO. 990067-EI

BEFORE:	CHAIRMAN JOE GARCIA COMMISSIONER J. TERRY DEASON COMMISSIONER SUSAN F. CLARK COMMISSIONER JULIA A. JOHNSON COMMISSIONER E. LEON JACOBS
PROCEEDING:	AGENDA CONFERENCE
ITEM NUMBER:	10A**
DATE:	March 16, 1999
PLACE:	4075 Esplanade Way, Room 148 Tallahassee, Florida

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(850) 561-5598

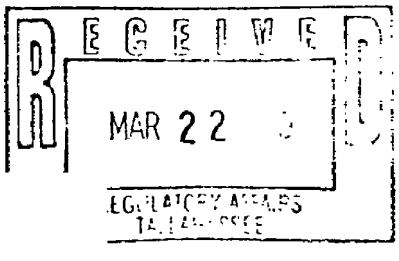

Exhibit D

APPEARANCES:

JACK SHREVE, Esquire, representing OPC
RON LAFACE, Esquire, representing Coalition for Equitable Rates
JOHN McWHIRTER, Esquire, representing FIPUG
MATTHEW CHILDS, Esquire, and Mr. Evanson representing FPL

STAFF RECOMMENDATION

Issue 1: Should the Commission approve the Stipulation entered into by Florida Power & Light Company (FPL), OPC, the Florida Industrial Power Users Group (FIPUG), and the Coalition for Equitable Rates (the Coalition)?
Primary Recommendation: Yes. The Stipulation should be approved.
Alternative Recommendation: No. The stipulation should not be approved.
Issue 2: Should this docket be closed?
Recommendation: Yes. Absent a timely appeal of the Commission's final order, no further Commission action will be required and the docket should be closed.

PROCEEDINGS

CHAIRMAN GARCIA: All right. So we are going to begin the agenda today on Item Number 10A. Very good. All right, we'll hear from staff to introduce this and then we'll go to Mr. Shreve and --

COMMISSION STAFF: I'm not sure I want to do it, Chairman Garcia, but as you can see we have quite a panel of guests here today, you might want to hear from the parties to get an overview of the stipulation. That's why we're here. We have a recommendation, a primary and alternative recommendation. One supporting the stipulation, one supporting the concept of going to a rate case.

CHAIRMAN GARCIA: Okay.

COMMISSION STAFF: We didn't have a lot of time to analyze this and, therefore, we have basically tried to identify areas of concern or areas that needed we thought special attention from the Commission, so I would suggest you get an overview from the parties. We could delve into why the primary is --

CHAIRMAN GARCIA: Very good, and I'm sure they'll make a commentary on those issues. Mr. Shreve.

MR. SHREVE: I would like to be able to reply to the staff recommendation because there are some things

in there that I think are practically improper when you take into consideration the past actions of the staff of the Public Service Commission. But a brief overview of our settlement is a $350 million rate cut with a safety net or cap and a sharing above certain revenue figures.

We've moved to a revenue cap because of past actions of the staff and the Public Service Commission when we have had settlement agreements that have been interpreted in a way that they were not intended, so we have moved to a revenue cap so that we would be assured of getting certain sharing for the customers.

I think basically everything has been discussed, we feel that we have a good settlement here. I would like an opportunity to reply when the staff discusses their recommendations. I think the president of Florida Power & Light would like to make a couple of comments. We feel that we have accomplished something here for the people of the State of Florida, for all of the customers of Florida Power & Light, and would like to have it approved.

CHAIRMAN GARCIA: Thank you, Mr. Shreve.

MR. EVANSON: Well, I am delighted to be here to urge your approval of this agreement with the Office of Public Council. The agreement includes rate cuts

that will benefit our customers by over $1 billion during a three-year term.

First, let me express my appreciation to Jack Shreve. This agreement would not have been possible without his leadership, his knowledge, determination and resolve to reach a fair and balanced settlement without going through a costly time consuming adversarial rate case was really the key to reaching the settlement. And I'd also like to thank FIPUG and the Coalition for Affordable and Equitable Rates for supporting the settlement. And I'd also like to thank the staff of the Public Service Commission for the work that they did with us last year in trying to resolve a number of these issues.

Now, let just say a few words about the rate reductions. They do amount to $350 million a year or about $1 million a day, and every customer from the residential to the large commercial industrial will see a significant reduction of rates, on average more than 6 percent. Residential customers will save about $5 a month or $60 a year.

The last time our prices were this low was in October of 1983, sixteen years ago, and in real terms our prices are the lowest they've ever been since the history of the company. And as you know, we go back

to 1925. And, furthermore, under the agreement customers can see additional savings in the form of special rebates if our annual revenues exceed certain threshold amounts.

Now, I would have to ask what makes rate reductions of this magnitude possible. And quite simply, I think it's the dedicated work of our own FPL employees over the entire decade of the 1990s in lowering our cost structure and improving performance and operations. We have significantly reduced our operating and maintenance expenses. On a unit of output basis per kilowatt hour they are down 33 percent since 1990.

But we've done a lot more than control costs. Our operations are generally the best that they've ever been. For example, last year our fossil units operated at 94 percent availability, which were the best for comparable plants in the United States. And back in 1990 their availability was 77 percent. Our nuclear plants operated at 93 percent availability versus 67 percent back in 1990. And at year end, Turkey Point was ranked number one in the country by the World Association of Nuclear Operators, and St. Lucie was ranked number three at that time. So the best nuclear facilities, dual plants in the country.

And, as you know, we've been making significant improvements in reliability of our systems. Last year we decreased the time the average customer was without power by 27 percent, and I can assure you we are absolutely committed to continue making improvements in reliability. So while our employees have been working harder and smarter over this period, these rate reductions also would not have been possible without sound regulation. And over a number of years this Commission has set the regulatory tone and framework with the view toward the long-term benefit of Floridians, and I think your approval of our special amortization program is a good example of that.

So, in my opinion, this agreement demonstrates that regulation in Florida work and that you don't need deregulation to lower prices. We've really proven that. And if you look to California, which some people hold up as the model to deregulation, California customers will be paying 42 percent more than our customers after this is approved. So I would urge quick action of the Commission in approving the settlement and thank you for allowing me to make these comments.

MR. LAFACE: Mr. Chairman, Ron LaFace

representing the Coalition for Equitable Rates. I would also like to urge the Commission to approve this settlement. The way the settlement is structured the rate cut goes into effect the day after approval, which means a million dollars day start accruing to the benefit of customers of Florida Power & Light tomorrow and will show up on their first bill thirty days out from that.

And I would like to also say that there is some question on the staff's part, but remember the first case we intervened on was the return on equity case and the staff recommendation in that case would not have any rate reductions until the year 2000. That's $700 million later, so we're very anxious to effectuate this settlement and appreciate the --

(Inaudible).

MR. LAFACE: No, sir.

MR. McWHIRTER: Mr. Chairman, I too urge you most earnestly to approve this settlement, this magnificent settlement. And great credit goes to Jack Shreve. He has done things that I think are phenomenal and far better than I think we could have achieved without him. He has carried the ball and done a marvelous job.

I don't want to undersell your staff, because

your staff laid the predicate for what has gone after that. Your staff developed the information that has enabled us to see what was going on in Florida Power & Light's operation and triggered Mr. LaFace and I protesting your last settlement, and Jack, like a white knight on a golden steed, ran forward, took the ball, and produced this magnificent settlement. And I think he deserves great applause.

Every joyous group has to have I guess one curmudgeon and that happens to be me in this instance. And it's not because of the recommendation, it's because of the post-settlement comments made by Mr. Evans. And I just -- in the same arena where those comments were made, I think it appropriate to say, hmmm, are you sure that's true?

He says that this settlement proves that regulation works. Actually, the settlement proves that regulation doesn't work. Your staff's ultimate recommendation said we would like to have a full rate review and full understanding of Florida Power & Light's operation. It acknowledged, however, and this is the problem with regulation, that when we performed that study this million dollar a day rate reduction won't start happening for probably eight months to a year. So if went through the normal regulatory

process, without the settlement, it would happen much later, and that's why we approved the settlement without having all the information in hand.

The other comment made was that Florida customers on average are doing better than states where there is competition, and cites California. I was intrigued by that when they first made the comment last week, and I went back to the internet and I pulled down the Department of Energy study, and it turns out that the average residential customer of the Florida Power & Light system actually pays 60 percent more than the average residential customer of San Diego.

COMMISSIONER CLARK: Mr. McWhirter --

CHAIRMAN GARCIA: Isn't that based on usage?

COMMISSIONER CLARK: -- is that the bill or the rate?

MR. McWHIRTER: It's based on the bill. And the bill is -- and the customer -- let me say this to you, the customers are concerned about the bill, not the rate. I don't care if I'm charged 50 cents a kilowatt hour if I only have to pay $10.

COMMISSIONER CLARK: Well, that's not how Californians felt about it. They ultimately cared about the rates, and that's why they have deregulation.

MR. McWHIRTER: That's right. Those California citizens who paid less than the Florida Power & Light customers sponsored and fostered --

CHAIRMAN GARCIA: Mr. McWhirter, when we can regulate the weather in Florida, I'm sure that that will be an issue that will come before us. But maybe we can move on with this.

MR. McWHIRTER: But I will conclude my remarks by saying I applaud Florida Power & Light in the way it has responded. It has done a good job. I just don't think we need to get into the side issues of whether regulation is working or not. Regulation does need to be studied. You're doing a good job, and I hope you'll keep regulating, and I hope you'll keep doing the same good job you are today.

CHAIRMAN GARCIA: We'll hear from staff, and I'll take objection to the comments of Jack Shreve dressed in white on a golden steed. I always see him more as a Don Quixote type figure defending Florida's ratepayers, and he always has been a --

MR. McWHIRTER: Mr. Chairman, he would rather be dressed in gold. It's now totally appropriate that Florida Power & Light owns windmills.

CHAIRMAN GARCIA: Tim. I mean, we've all read it. I think we've read the primary and the

alternative, and I think maybe you could tee them up and if Commissioners have questions, because we don't have any questions or any parties there, so just tee them up and then while the Commissioners ask questions specifically.

MR. DEVLIN: I could give just a prelude, we don't have to go into a lot of detail. But the main thing was the trade off between the stipulation and all the benefits associated with it are significant, in my opinion, and going to a rate case, what might happen in a rate case eight to twelve months down the road. And that's what we're trying to articulate in our recommendation. And we can go any direction you want to go to do that.

I mean, my position is that there is just too much up front benefits to risk what could happen twelve months from now.

CHAIRMAN GARCIA: Okay.

MR. DEVLIN: In a rate case there may be more or may be less in terms of a rate reduction, and I'm not sure, there is a certain element of uncertainty there. And then the other part, the other basis of my recommendation, is the Commission based on Bob Elias' interpretation, still reserves the authority to interject itself if earnings get out of line. That's

the basis of the primary recommendation.

But, again, I think it's really important, so you might want to talk a little bit about the alternative recommendation, but also it's really important to deal with areas that we think need clarifying.

CHAIRMAN GARCIA: I'm sorry?

MR. DEVLIN: Areas that we think need clarifying, and we have them listed throughout the recommendation. Perhaps we can go through those one at a time. Or do you want to -- maybe you want to hear a few comments about the alternative recommendation before we do that.

CHAIRMAN GARCIA: All right. Beth.

MS. SALAK: I'm representing alternative staff, and our position is basically that we believe that FPL, while we appreciate all the work Mr. Shreve has done and we agree that an upfront rate reduction of $350 million is extremely hard to recommend against, but we believe there are benefits associated with reviewing FP&L's earnings. We believe that the person -- Mr. Shreve has proposed to go for a full revenue requirements case would give us the opportunity to look at that there is the possibility of a different outcome at the end of the rate case. Perhaps to a greater long-term benefit of the customers, and we're

suggesting that (inaudible).

CHAIRMAN GARCIA: Okay, thank you. Yes, Mr. Shreve.

MR. SHREVE: I probably want to speak to that, too. The staff did not mention the possibility of the -- if you go through a full-blown rate case that there will be less benefits to the customers, and should you continue the staff recommendation in view of write-offs that they've had, there probably would be a great deal less.

The staff of the Public Service Commission and the Public Service Commission have had the opportunity to bring a full-blown rate case at anytime they wanted to and have neglected to do it. Have on contrary made it a purpose to agree with Florida Power & Light in the last ROE docket that was filed by them to put forth a plan that would have extended through the year 2000 without any rate case.

I think it's very strange that they would come forward at this time and say they would rather have this particular settlement killed and go through a rate case when they have neglected and hesitated to go through a rate case when they could have gotten these benefits at any time they wanted to.

We've watched it through '97, '98, '99, and 2000,

and then an extension in '99 on through the year 2000 of the third agreement. They also did not mention that we have a safety net on this that you would not have in a rate case. There would be no money subject to refund held after a rate case, you would have to wait until you had a history and see how much could be refunded. We have a safety net in place above a certain about of revenue that would give a refund to the customers.

There are other -- there was also a comment, and we've gone on now to the alternative recommendation, about the way the benefits were divided among the customers. We divided the benefits exactly the same way the Public Service Commission and the Public Service Commission staff recommended in the last FP&L rate cut, which took affect in January of 1990, which was based on a per kilowatt hour basis. Their recommendation in Gulf Power today is based on a per kilowatt hour basis, and the last St. Lucie nuclear plant, which was an increase, a very large increase was based on a per kilowatt hour basis.

This is an excellent settlement. It is much -- we have been four or five years of staff recommendations and agreeing with Florida Power & Light without passing on any rate cuts to the

customers. I think this should be approved. It's a $350 million rate cut, with the possibility of refunds for the customers.

CHAIRMAN GARCIA: Okay. Commissioners, do you have any questions, or would you like to work it through -- Mr. Devlin said he wanted to touch on some issues that he wanted clarified, but if you would rather just ask them questions and then have them go through it.

COMMISSIONER DEASON: My personal preference would be allow Mr. Devlin to go through the areas that he thinks need some clarification.

CHAIRMAN GARCIA: Okay.

MR. DEVLIN: Thank you, Mr. Chairman. If you could turn to Page 3, and we may have to shuttle some staff back and forth, I don't have all the answers here, but I just think these areas need to be touched upon.

And the first area is, you know, what happens to the current expense plan up to the point where rate reductions would take place in the event that the Commission approves this situation. And we just want to point out that that is still an area that we haven't resolved yet, and how the expense plan would work up through, let's say, April 15th of this year.

There is some 50 to $70 million at stake here, so --

COMMISSIONER DEASON: Let me -- if we're going to take these one-by-one, I'll ask questions now if that's okay.

CHAIRMAN GARCIA: Absolutely.

COMMISSIONER DEASON: Is it your concern that the stipulation -- I know the stipulation addresses the fact that the amortization would cease with the implementation of the settlement, correct?

MR. DEVLIN: Right.

COMMISSIONER DEASON: And staff doesn't have a problem with that concept, it's just a question of clarification as to how you calculate what the amortization would be from the beginning of this year to the implementation of the settlement, correct?

MR. DEVLIN: That's correct. There is a disagreement right now apparently, at least an ambiguity between some of the staff. We haven't had a chance to work it out at this point.

COMMISSIONER DEASON: Okay. I guess if there is -- I guess this raises kind of a general question. No matter how well-crafted the stipulation is going to be, at some point there is probably going to be some question. That's just the way it is with anything that you write down in paper, whether it be

legislation or a rate case order or whatever, there is going to be questions. And I guess my question, and I'll address it to the parties, if there is a situation and maybe this is a good example, when it comes to the Commission to implement something under the settlement and there is a legitimate difference of opinion as to what the stipulation provides, how do we reconcile that?

How do we address -- because this is something that's going to have to be done, a dollar amount is going to have to be calculated, and apparently there is some disagreement between our staff and the company. How do we go about calculating that number and still be fair to the essence of the stipulation?

COMMISSION STAFF: If there is any disagreement the Commission would ultimately make the decision to resolve that disagreement. As long as it comes out to $1.1 billion I think we can work around everything else.

COMMISSIONER DEASON: Mr. Childs.

COMMISSION STAFF: I think Mr. Childs has --

MR. CHILDS: Well, you know, I assume that the matters that are not addressed by the stipulation would be addressed by the Commission, and I happen to think that this is a matter that is not addressed by

the stipulation.

CHAIRMAN GARCIA: I'm sorry, Mr. Childs, I didn't hear the last thing you just said. If you could bring the mike a little bit closer. Thank you.

MR. CHILDS: Sorry. This is not a matter that is addressed by the stipulation. The stipulation addresses when you seek the amount if there is any question at all is under that separate arrangement, and with all due respect, I don't think there is a disagreement. I think FPL is proposing to do what it has been doing for the last number of years, that has been given to the staff and the staff has reviewed. They may have a different point of view at this time, but I think basically it's a separate issue, it's not part of the stipulation and settlement.

COMMISSIONER JACOBS: Can we bring a recommendation back onto that docket then, under the prior docket? Is that how we do that?

MR. CHILDS: I would think that if there is a question as to the amount that is expensed under that prior docket that it would be addressed in that docket.

CHAIRMAN GARCIA: Okay. Mr. Devlin, is that satisfactory to you?

MR. DEVLIN: Yes, sir. I didn't hear everything

that was said, I apologize, but one of the things -- in the interest of time, this could be grueling to go through each of one of our items, and most of them are not significant in materiality, and what we could do is if the Commissioners had any areas that they wanted to --

CHAIRMAN GARCIA: I think that might be more --

MR. DEVLIN: Otherwise, we're going to interpret the stipulation the way we have it laid out in our recommendation.

CHAIRMAN GARCIA: Okay.

MR. DEVLIN: And that would be what would be in the order.

CHAIRMAN GARCIA: Very good. And I don't think the parties have any problem with that. Good. All right. So, Commissioners, do you have any questions?

Commissioner Jacobs.

COMMISSIONER JACOBS: The point came up, and I think it's a valid point, it was raised by Mr. Shreve on the allocation issue. And that is that we have -- we have historically looked at users in how we do that. Help me understand what the trade-offs are?

MR. DEVLIN: Basically, the issue we raised with regard to the allocation is that in a full requirements proceeding costs are allocated to rate

classes -- well, base rate costs largely are allocated based on each class' contribution to the peak demand. The way the reduction is proposed to be allocated is on an energy basis, which is kind of a mismatch, and that's what we were pointing out.

For example, in the cost recovery clauses, such as the capacity cost recovery clause, where they recover demand related production plant costs, we do use a demand allocator to allocate those costs to the customers. So it was the staff's belief that it would be more appropriate to use a demand allocator to, in effect, allocate the reduction.

Mr. Shreve is correct, we have done reductions in the past on a per kilowatt hour basis, but I believe that it would be more appropriate to use the demand allocator, so basically that's what we want to bring to the Commission's attention with that particular concern.

COMMISSIONER JACOBS: One of your principal issues was simply that we need to study to find out what the final allocation -- to determine the allocations of cost.

MR. DEVLIN: Well, neither a demand allocator or a pure energy allocator would be strictly correct. In order to be strictly theoretically correct you would

have to do a full requirements rate case, conduct a cost of service study. So any method of allocating the reduction in the absence of a full cost study is going to be an estimate, it's not going to be theoretically correct.

The staff just believes that it would be more equitable since a large portion of those costs that are recovered through base rates are allocated on a demand basis as opposed to an energy basis that it would be more correct to use as a demand allocator in order to spread that decrease among the classes.

COMMISSIONER DEASON: Mr. Chairman --

CHAIRMAN GARCIA: Yes.

COMMISSIONER DEASON: -- I'm sorry, I don't mean to cut off the questions, but I would like to provide a comment in this regard. First of all, let me say that I appreciate staff raising the issue. Obviously it's their responsibility to try to identify all areas that raise a legitimate question or areas that appear to be ambiguous and get it on the table and let us have an opportunity to explore it and make sure that we're comfortable with them.

Let me say that I'm comfortable with what is in the stipulation, the way the rate reduction is to be allocated between the customer classes. And the

reason I say that is that, first of all, I think it's paramount for the Commission to place this stipulation in context. That is, it is a negotiated settlement. All the parties brought something to the table, all the parties wanted something, and I'm sure all the parties in getting something probably gave up something. And that's just the way that process works. So it's very difficult for us to go beyond that. And that to me on it's surface the way -- using a kilowatt hour basis serves two other purposes. One, I think it is simplistic, and it is easy for customers to understand, and it's the same rate per kilowatt hour.

Now, I understand that there are reasons to use demand allocators when we go to a rate proceeding, but we're not in a rate proceeding. And staff has just indicated any time you do a cost of service study there is estimates involved in that, as well, and it is not a precise science. If we went a rate case, those -- we could have a different cost of service study and it could be entirely different.

There is just so many unknowns, and we know that there are positive benefits to be gained right now. I don't have a -- I personally, as one Commissioner, don't have a problem with the kilowatt hour concept.

COMMISSIONER JACOBS: I think where I am is, I do want to make sure that we give proper deference, and I think that there has been substantial efforts and I want to applaud the effort that has been given, and I don't mean to cast anything on that. The only concern I have is, ultimately this is -- by the end of the third year on this we'll find ourselves in a position where we have no further intelligence about how to do -- where we are and where we go from there.

I think the parties have done a great job here. In the essence of time, let me make a suggestion here. It is my understanding that we could do a cost of service study on our own motion, and I'm reading staff's -- staff's recommendation that we retain that authority. Under that interpretation I would be willing to move forward today, but clearly registering my intent to place additional focus on this particular issue under that authority. And I think it would be fair to the parties to make note that if we approve this stipulation I'm very concerned about the analysis done by staff as to the potential authority that we have going forward and this would be an issue that I would think would be primary under that.

MR. SHREVE: I think there is a concern as to what happens at the end of the three-year time frame,

and I think all of us, including Florida Power & Light and the other parties, understand that we're going to have to be ready at the end of that time to make some move, whether we're going to be happy with the rates at that time, or whether or not we're going to be going forward for another additional rate cut, or whether Florida Power & Light after this rate cut might be coming in after their other investments for a rate increase.

Your staff and this Commission hasn't had a cost of study done in a long time, and this Commission has made exactly the same type of division or allocation as to what we did in this case. We're all going to have to be watching that.

I really think it's a little bit strange that the Commission staff would come up with this, pointing something out. I don't know what they're recommending. Although it's not in the recommendation, it's in Mr. Devlin's recommendation to approve it, and I appreciate Mr. Devlin's thoughts and what he has said, and I think he is exactly correct in what he has said, but then to come out with something that's just taking a shot while not recommending turning it down is nothing more than a shot.

They know -- they know or should know that this

is the same policy this Commission has been carrying out in the recent past. As of today in their own recommendation they're recommending that. I guess he's criticizing the Gulf Power recommendation of the staff. If he's recommending going through a full-blown rate case, then we're talking about not getting this benefit for quite some time for the customers.

COMMISSIONER JACOBS: Let me be clear. And I don't want to speak for any other Commissioner, but I think the benefits of this agreement are substantial and deserve full consideration. And my concern, while weighed against those benefits I don't think today measure up to canceling those benefits. But what I want to be real clear about is that ultimately we will face that moment of truth. And when we approach that moment of truth we ought to do so with the information that's necessary to make that decision. And the argument that we should continue a practice simply because it is a practice, while having some merit, I think has limited merit if we have the opportunity to come with full information and with knowledge about how to make that decision. So that's my point. My point it not to denounce or take away any credit from what you've done.

MR. SHREVE: No, and I don't have any problem with your view of this. The problem I have is with the staff of the Public Service Commission. What you might as well understand is, I feel that all of the customers should benefit from this settlement, and I think they do. I am the one person that has always advocated for the residential ratepayer to try and make sure that they were treated fairly, and I think they are.

COMMISSIONER JACOBS: I think that's true.

MR. SHREVE: But for the staff to take a shot like this, while not really recommending anything. Now, what your saying is we should go through this cost of study service when we have a full-blown rate case. I don't think there is any doubt about that, but when we talk about going through that you're talking about evidence and information put on by Florida Power & Light, by FIPUG, by the retail federation. You're talking about a full-blown procedure that is going to be time consuming. And I guess what really bothers me is that they would come out with something like this, while on the other hand going exactly the opposite way, and I think it's nothing more than a shot by staff that has not taken action like this in the past.

CHAIRMAN GARCIA: Thank you, Mr. Shreve.

MR. DEVLIN: If I could respond to that.

MR. LAFACE: Mr. Chairman, just for edification of the Commission, when Mr. Shreve lost his knighthood with me was when I tried to get more of a settlement for my client and he told me I couldn't get it because the Commission had done it this way in the past two cases. So I wanted more than we got.

CHAIRMAN GARCIA: I understand that, and I think we're getting into an issue here that --

COMMISSIONER DEASON: And that's my point precisely. I'm sure that -- I was not a party to those negotiations, but I'm sure that there was a lot of give and take, and it's very difficult to insert ourselves behind those negotiations and if the end result on the surface appears fair and reasonable, I don't think that we need to take it further than that, and that's why I'm comfortable with it.

CHAIRMAN GARCIA: If there are --

Mr. Chairman, I do have one other question, and if I get -- and I don't mean to cut off the debate, but I have one other question, and then after that question I'm prepared to make a motion.

CHAIRMAN GARCIA: Okay.

COMMISSIONER DEASON: The question that I have

concerns the potential for an amortization amount and the way it could be booked to a separate reserve account and how that could have an effect on the appreciation rates. I'm not saying I have a problem with that, I just want to understand at least from staff's prospective what that language in the stipulation means.

COMMISSION STAFF: Staff is concerned that in the future when depreciation rates are reset at the end of the stipulation period, the amount that has the extra amortization will not be included in the calculations of the rate and will result in rates that are not theoretically what we would like to see.

COMMISSIONER DEASON: But if there is to be extra amortization that's at the discretion of the company, that's 200 million per year, is that correct?

COMMISSION STAFF: Right, that's correct.

COMMISSIONER DEASON: Okay, alright. And the last question I have concerns -- and I think this has probably already been answered, but I just want to confirm it. This Commission would obviously continue to have our jurisdiction over quality of service. And, first of all, I want to say I agree with Mr. Evanson that the company has identified an area, and they have made a concerted effort to address

reliability and outages and things of that nature and information that I've seen reported has shown a tremendous increase in that area and an expenditure of great resources on the company's part to make those improvements. So I'm not saying that there is a problem with all these services, I just wanted to make sure that the Commission would still have our jurisdiction over quality of service even after this settlement is approved. Is that correct?

MR. DEVLIN: Yes.

COMMISSIONER DEASON: Okay. With that Mr. Chairman, I'd like to make a motion that we approve our primary staff recommendation, which would be to approve the settlement agreement. Let me be the first to congratulate the parties in reaching this settlement. I think it is in it's magnitude -- this is historic in the magnitude of this, but I also want to congratulate our staff. I think they laid a lot of predicate work.

I think this Commission to some extent needs to realize that we have endeavored over a number of years to try to eliminate a lot of cost. A lot of those are regulatory costs. Tried to get depreciation in agreement with where it should be, there were deficiencies in the past. We've taken those efforts,

and I think we're seeing the fruits of those efforts now.

And I also agree with Mr. Evanson that the management and employees of the company have taken a great deal of effort to maintain a high quality of service with fewer people and try to obviously work under a tighter budget. So I think everyone should be congratulated. I want to make sure that everyone is, because I feel very good about this settlement and this stipulation. I think that there are going to be tremendous benefits which are going to be obtained almost immediately, and that is probably the biggest benefit of this settlement. And with those remarks I would move approval.

COMMISSIONER CLARK: Second.

MR. EVANSON: Before you vote, I had one last thing I wanted to say. And I'm sorry to interrupt you at this point, but there was earlier comments that I wanted to address so that there was no misunderstanding in the settlement.

CHAIRMAN GARCIA: Okay.

MR. EVANSON: I think it was said that to take the staff recommendation as settlement, to take everything in the staff recommendation as being (inaudible) settlement, and with all due respect, we

take exception to that, and urge you that the settlement is the settlement, that's the document before you. One of the suggestions, and there was some time spent on this in the recommendation, is that to the Commission's authority with respect to a settlement and your continuing jurisdiction. To me that's a matter that the Commission's jurisdiction and it's authority is what it is. I'm a little reluctant to accept a gloss on that jurisdiction as a condition of approval of the settlement. And, you know, I think the idea of telling the Commission that it has to come back and review rates to determine if they are reasonable or not is a time when the staff is suggesting to you that you should be looking to return on equity as opposed to the mechanism in the settlement which is based on revenue for sharing, and that's an important point. I do think that the staff's legal analysis may need to be updated to reflect the decision of the Supreme Court where we challenged a decision by this Commission on very much similar grounds when you approved a standard offer contract for purchase of some cogenerators for thirty years. And said that once you made that decision you weren't going to redo the decision. And we said, well, you know, things change. And the court said you

can't make that decision. And that's thirty years. Here we have a three-year settlement where we're proposing what the mechanism is. All of the parties have accepted that. I don't think we should debate at this point what the Commission's authority is, but I think that we ought to --

CHAIRMAN GARCIA: You're simply saying that the Commission's authority is what the Commission's authority is.

MR. EVANSON: It is, and we are asking you to approve this stipulation which says that you will look to revenues in future years as the basis to determine what should be done in terms of refunds to customers.

COMMISSIONER CLARK: Under the stipulation. And if we would have any authority beyond that we would debate that at that time? I guess -- the issue that I would guess that staff has brought up is that can we bind future Commissions.

MR. EVANSON: And what I'm suggesting to you is that when I said I think that what they wrote needs to be read in connection with the decision by the Supreme Court in 1993 that said you could make a decision on prudence and have that decision last for thirty years. And I'm saying that we submit to you that the benefits of this transaction is a three-year deal, but it's a

prudent deal and the mechanism ought to at least last for three years.

COMMISSIONER CLARK: By approving it we are saying that it will last three years.

MR. EVANSON: That's right.

COMMISSIONER JACOBS: I interpreted it -- correct me if I'm wrong, but I thought I interpreted it fairly -- like it was a broader concern on staff, and that was that we were deviating from the historical practice of looking at rate of authorized return. And in doing so by accepting this agreement we might be restricting our ability to do so in the future for this particular company. Is that correct?

MR. CHILDS: Yes. The Commission's charge is to establish rates which are fair, just, and reasonable --

(Simultaneous conversation.)

MR. CHILDS: I'm sorry, I didn't --

COMMISSIONER JACOBS: We use the range of that vehicle.

MR. CHILDS: Historically, yes.

COMMISSIONER JACOBS: And now we're going to be using revenues.

MR. CHILDS: The parties have agreed to use revenues as a basis to decide whether the rates of

Florida Power & Light company are fair, just, and reasonable.

COMMISSIONER JACOBS: And so the concern is to what extent during the course of this agreement we have the authority to look at this company from the context of the authorized range.

MR. CHILDS: Well, I would say that it's just a little bit broader than that, and that is tie it back to the question of whether the rates are fair, just, and reasonable on a going-forward basis, and not just a particular numeric authorized or achieved return on equity.

CHAIRMAN GARCIA: Okay. Mr. Shreve.

COMMISSIONER JACOBS: Let me ask a question again real quick. Now, Mr. Chiles, your argument would be that we have that jurisdiction, but you wouldn't want to -- you would want it always to be interpreted in the context of the language of this agreement?

MR. CHILDS: That's right. That you have looked at it and said that for this company under these circumstances this settlement is good and we approve it and we know what it means.

CHAIRMAN GARCIA: But you in no way, Mr. Childs, are saying that we would give up our jurisdiction --

MR. CHILDS: I'm not saying you give up your

jurisdiction, no, but I'm saying when you exercise it now in approving it you are exercising your jurisdiction and saying you think that it is an appropriate settlement.

CHAIRMAN GARCIA: Correct.

MR. ELIAS: And if I could just quote through --

CHAIRMAN GARCIA: Mr. Elias, excuse me for a second. Mr. Shreve had asked to speak.

MR. SHREVE: Mr. Elias said that we're determining what is fair and reasonable rates by a revenue mechanism. The revenue mechanism is determining the possibility of a refund that in a rate case you would not have. The company has given us that safety net, so to speak. That is now on a revenue basis, and the reason it's on a revenue basis is because in the past we have put in some language that said the issues would be the same as in the last rate case.

We did that in the Tampa Electric settlement, and the staff said, well, no, that's not really what you meant when you said that. So now we're taking away that and we're not going to lose that benefit for the customers anymore. We're saying above a certain amount of revenue there is a refund available. We have also put in here a range of 10 to 12 with a

midpoint of 11, which is lower than the staff of the Public Service Commission agreed to with Florida Power & Light. That range is for all purposes. We have determined what the rates are under this and we under this settlement cannot change what your authority is. We went through the same thing with the Florida Power settlement. We can bind ourselves, but we're not trying to change what your authority is. If you have it, you have it; if you don't, you don't.

CHAIRMAN GARCIA: I don't think anyone disagrees with that, Mr. Elias, and I don't think you do, either.

MR. ELIAS: Good.

CHAIRMAN GARCIA: With that said, we have a motion and a second by Commissioner Clark.

COMMISSIONER CLARK: Mr. Chairman, I would indicate that I really can't add anything beyond what Commissioner Deason said, only that I don't think I would like to negotiate with Mr. Shreve under any circumstances.

MR. CHILDS: Mr. Chairman, the approval though should just be a simple approval of the settlement, not going into a forty page discourse from staff.

COMMISSIONER DEASON: Let me clarify my motion, okay? I did technically move approval of the primary.

Maybe I misspoke. I want to approve the stipulation and the stipulation provides what the stipulation provides. Our jurisdiction is what our jurisdiction is, okay? And we're not giving up any of our jurisdiction, in my opinion. We can't. I mean, our jurisdiction is what it is by law and we can't, you know, change that.

But I wanted it understood that my motion tried to include the clarification that we discussed here today, and I guess that's when I said move primary. I'm willing to move approval of the stipulation consistent with the discussion that has taken place here today.

CHAIRMAN GARCIA: And I think the parties openly said that clearly if there was any discussion on these issues this is the forum --

COMMISSIONER DEASON: And that's the clarification I want to make sure is that as I indicated earlier, no matter how well-crafted a stipulation is, or an order from this Commission, whatever, in the future there may be a question and that this Commission is going to ultimately have to decide that interpretation if it comes to that. Hopefully, everything will go so smoothly there is no controversy whatsoever. But in the event that there

is, that's still resides with the Commission.

CHAIRMAN GARCIA: All right. We have a motion and Commissioner Clark agrees with that, and seconds it --

COMMISSIONER JACOBS: One very brief point. I would be interested in hearing from staff and from the parties to contact -- not today, but I'll be interested in understanding the extent which we can look at doing a cost of service study outside of a rate case.

CHAIRMAN GARCIA: Okay. Commissioner Johnson, did you want to say anything before we call the vote?

COMMISSIONER JOHNSON: I agree with all the comments made by Commissioner Deason. In the first instance, I was prepared to move staff with the clarifications that they were suggesting that we do upfront, but understanding that we have continuing jurisdiction. To the extent that there is ambiguity that needs to be resolved, I'm sure it will be back before us. With that, I'm in favor of the motion.

CHAIRMAN GARCIA: Very good. I'm going to move -- I'm going to vote with Commissioner Deason on this. I want to again express -- first of all, I want to commend staff. I think today that the message unfortunately wasn't as clear as it should have been

from staff, but I think you're trying to be honest with your position. However, I think what Jack Shreve did for Florida ratepayers today under very difficult circumstances and in a very complex way, I think Commissioner Deason called it simplistic, but I hope it's not that, it's exactly the opposite.

COMMISSIONER DEASON: No, I was referring simply to the kilowatt hour concept. I mean, that's easy for customers and for us to understand.

CHAIRMAN GARCIA: It's even easy for me. I can even understand it, which I think is great. And I think today staff -- I think staff put the ball in play, and Jack Shreve I think scored a touchdown for Florida ratepayers today, and I think he is to be commended. I think the company's willingness to negotiate is to be commended, and the parties came together here. Clearly this is good for Florida, and I want to say that I may have some problems with Mr. Evanson's definition of competition in California, but we'll discuss that on another occasion.

That said, we have a motion and a second. All those in favor signify by saying aye.

(Unanimous affirmative vote).

CHAIRMAN GARCIA: All those opposed. Show it approved 5-0. Commission will take a -- Commissioner,

yes?

MR. SHREVE: If I could, I would like to thank the Commission for their consideration of this in such a hurry. We think the ratepayers are going to benefit by your actions. I would like to thank all the parties. It's been a pleasure to work with them. We've had a lot of arguments and hard discussions, but we do feel that this is really in the best interest of the ratepayers and thanks to you for helping us get this up and get this benefit to them in a hurry.

CHAIRMAN GARCIA: Thank you, Mr. Shreve.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 41 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 21st day of March, 1999.

JANE FAUROT, RPR
P. O. Box 10751
Tallahassee, Florida 32302