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December 14, 2001

Via Federal Express

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

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COMMISSION
CLERK

**Re: In Re: Review of the retail rates of Florida Power & Light Company,
Docket No. 001148-EI**

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen (15) copies of the Answer of South Florida Hospital and Healthcare Association To Florida Power & Light Company's Motion For Protective Order Regarding South Florida Hospital And Healthcare Association's First Set Of Interrogatories And Request For Production Of Documents, in the above referenced docket. Also enclosed is 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,



Kenneth L. Wiseman
An Attorney For South Florida Hospital &
Healthcare Association and the Hospitals

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cc: Parties of record

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In Re: Review of the retail rates of
Florida Power & Light
Company**)
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**Docket No. 001148-EI
Dated: December 14, 2001**

**ANSWER OF
SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION
TO FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR PROTECTIVE ORDER REGARDING
SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION'S
FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF
DOCUMENTS**

Pursuant to Rules 25-22.060, 28-106.103, and 28-106.303 of the Florida Administrative Code, the South Florida Hospital and Healthcare Association and supporting members (collectively, "the "Hospitals") hereby file this answer in partial opposition to "Florida Power & Light Company's Motion For Protective Order Regarding South Florida Hospital And Healthcare Association's First Set Of Interrogatories And Request For Production Of Documents" ("Motion"). By its Motion, FPL seeks to prevent any disclosure of certain information that is responsive to one of the Hospital's discovery requests to which FPL otherwise does not object. FPL seeks to prevent disclosure of the information, even under a protective order, principally claiming that disclosure of the information could cause competitive harm to third-party utilities.

As is discussed herein, the relief FPL seeks is overbroad because the Commission can take steps that will address FPL's concerns, while at the same time providing to the Hospitals, under the terms of a protective order, the relevant information in the documents FPL seeks to withhold. As a result, rather than denying the Hospitals access to information that is highly relevant for purposes of determining the appropriate level of costs to include in FPL's rates, the Commission should order the release of the documents under a protective order, with the added provision that the identity of third-party utilities shall be deleted, and

therefore, the identity of third-party utilities will be fully protected. In support hereof, the Hospitals state as follows:

1. Request No. 3 in the Hospitals First Set of Requests for Production of Documents requested FPL to “provide and identify all documents that compare FPL’s levels of costs, revenues or earnings (or the rate of increase or decrease thereof) to those of another utility or other utilities, including historic or projected data, which have been prepared or obtained on or after January 1, 1999.” FPL did not object to the request. It asked only that the Hospitals clarify whether they sought comparisons of FPL’s various cost elements to the cost elements of other utilities, or whether the relevant comparisons involve only totals as between companies’ levels. Pursuant to FPL’s request, the Hospitals clarified that the documents sought should contain comparisons of FPL’s and other utilities various cost elements, as well as costs comparisons at total company levels.

2. In its Motion, FPL acknowledges that it has documents that are responsive to the Hospital’s request as clarified. Apparently some of those documents consist of comparisons that were made available to FPL as a participant in a benchmarking study performed by the Edison Electric Institute (“EEI”). In its Motion, FPL asks that the Hospitals and other parties to this proceeding be denied any access whatsoever to the EEI documents, even under the terms of a protective order.

3. As grounds for its Motion, FPL states that participants in EEI’s benchmarking study provided information based upon an understanding that the information would be kept confidential and disclosed only to other participants that also provided their cost information for the survey. FPL claims that disclosure of the information to the Hospitals would cause competitive harm to the survey participants. Motion at ¶¶ 3 and 6. FPL further claims that the Commission would be forcing FPL to violate the terms of its confidentiality agreement with EEI, which, according to FPL, could harm FPL by depriving it of cost-comparison

information in the future. Motion at ¶ 6. FPL also states that it asked EEI for permission to disclose the information under the terms of a protective order and that EEI opposed disclosure, even under the terms of a protective agreement, claiming that the Commission does not have jurisdiction to require disclosure of data as to survey participants that are not Florida utilities regulated by this Commission. Motion at ¶ 4. Finally, FPL claims that the EEI documents comprise only a small portion of the total cost-comparison information that is responsive to the Hospital's request. Motion at ¶ 5.

4. FPL's objections do not provide a basis upon which to grant the extraordinary order that FPL is seeking. The Commission can order FPL to undertake one simple measure that will result in the Hospitals obtaining the information they are seeking while protecting survey participants from suffering competitive harm. The simple measure is that FPL can mask the identity of all survey participants other than itself. Thus, the Hospitals would be able to compare the cost elements that underlie FPL's proposed rates to the costs incurred by other utilities without any potential for the Hospitals or any other party to tie the cost data to any particular utility other than FPL. This simple measure fully would eliminate any possibility of disclosing information that could cause competitive harm to any of the survey participants.

5. Masking the identity of the survey participants also would address any concerns with FPL violating EEI's privacy policy because the data that would be made available (with the exception of the information regarding FPL) would not disclose the identity of the utility that submitted the information. Further, FPL has not claimed that EEI has affirmatively stated that it would bar FPL access to the survey data in the future if, under the Commission's order, FPL were to provide the information in the redacted format discussed herein. Indeed, the affidavit from an EEI employee that FPL submits in support of its Motion contains no threat to cut off a flow of information to FPL under any scenario.

6. FPL's/EEI's argument that this Commission has no jurisdiction to order the disclosure of information concerning utilities that are not subject to the Commission's jurisdiction also should be rejected. First, the Commission has jurisdiction to order FPL, which is subject to the Commission's jurisdiction, to produce all information of any kind or nature that is relevant to determining whether FPL's rates are just and reasonable. Second, in any event, if the identity of the utilities other than FPL is masked, then no utility in another state would have a basis upon which to complain because the Commission's order would not tend to reveal the other utilities' costs.

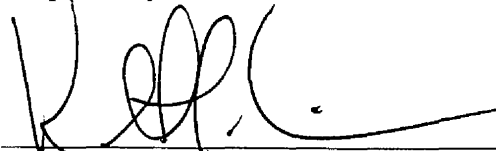
7. Finally, FPL's last claim, *i.e.*, that the EEI documents comprise only a small portion of the total cost-comparison information that is responsive to the Hospital's request, undercuts FPL's other arguments in support of non-disclosure. If, as FPL suggests, the information that the Hospitals are seeking, *i.e.*, a comparison of FPL's cost elements with the cost elements of other utilities, is available in other documents that can be produced without any protections, then there can be no concern that releasing comparable data (contained in the EEI documents) would produce additional harm. In other words, FPL appears to be suggesting that the cost comparison information FPL seeks to withhold is, or will be, in the public domain through the release of other documents which require no level of protection. If that is the case, there is no basis for FPL's claim for a need for confidentiality with respect to the information in the EEI documents.

8. Regardless of whether the information FPL seeks to withhold is in the public domain or not, from the Hospitals' perspective, the significant issue is obtaining the potentially critical information relating to the reasonableness of costs underlying FPL's rates in the expeditious fashion necessitated by the procedural schedule in this case. Therefore, the Hospitals ask that the Commission issue an order requiring FPL to produce the EEI documents, (i) subject to a protective order and (ii) with the identity of all utilities other than

FPL redacted. The Hospitals submit that such a procedure fully protects the rights and interests of all concerned and is consistent with the objective of developing just and reasonable rates.

WHEREFORE, for the foregoing reasons, the Hospitals request Commission action consistent with the foregoing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Sundback', written over a horizontal line.

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ATTORNEYS FOR THE HOSPITALS

December 14, 2001

**CERTIFICATE OF SERVICE
DOCKET NO. 001148-EI**

I HERBY CERTIFY that a true and correct copy of the foregoing has been furnished by
U.S. Mail to the following parties, this 14th day of December, 2001.

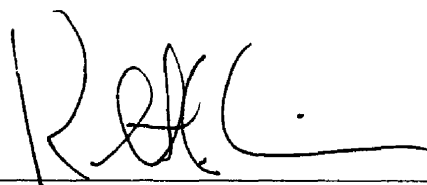
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