

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power & Light Company.

) Docket No. 020262-EI

In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power & Light Company.

) Docket No. 020263-EI

) Served: August 26, 2002

FACT'S MOTION FOR PROTECTIVE ORDER; MOTION FOR ORDER LIMITING DISCOVERY; AND MOTION FOR STAY IN RELATION TO FLORIDA POWER & LIGHT COMPANY'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND FIRST SET OF INTERROGATORIES

The Florida Action Coalition Team ("FACT"), pursuant to Rules 28-106.204 and 28-106.206, Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure, hereby moves the Florida Public Service Commission ("Commission") to enter its order finding that FACT does not have to answer Florida Power & Light Company's ("FPL's") First Set of Interrogatories, First Request for Production of Documents, and provide Ernie Bach for the FPL deposition noticed for August 28, 2002 (collectively "FPL's Discovery"), or, alternatively, that the Commission enter its order finding that any discovery FPL is allowed to pursue be strictly limited to certain relevant matters. Lastly, FACT would ask this Commission to enter its order recognizing that FACT is entitled to a stay from having to answer the challenged discovery or sit

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for the challenged deposition pending this Commission's complete and final resolution of this motion. The grounds for this motion are as follows:

DOCUMENT NUMBER-DATE
09004 AUG 26 08
002307
FPSC-COMMISSION CLERK

INTRODUCTION

FACT would ask this Commission to keep directly before it the clear fact that Florida's largest electric utility, the petitioner in these cases, FPL, is seeking to remove from this case, through rather extraordinary efforts, the only party representing the utility's residential customers. Why? Why is FPL trying so hard to remove little customers from this case when the subsidiaries of other huge electric utilities and an association of large industrial customers are allowed in without FPL's objection?

The purpose of this motion is to argue (1) that FPL missed its legal window within which to challenge FACT's party status granted by Commissioner Deason's order when it failed to seek reconsideration or appellate review of that order in a timely manner; (2) that the scope of permissible discovery relevant to the associational standing issue is extremely limited and that further FPL discovery, if any, related to this question should be strictly limited by order of this Commission; and (3) that the Commission should recognize that FACT is entitled to a stay precluding it from responding to any of FPL's over broad and impermissible discovery pending the final resolution of FACT's motion seeking protection.

BACKGROUND

1. On March 22, 2002, FPL, in the above-styled dockets, filed its initial petitions for need determinations for new generation proposed for its Manatee and Martin plant sites pursuant to the provisions of Section 403.519, Florida Statutes.

2. In response to criticism from intervenors, including Reliant Energy Power Generation, Inc., Calpine Energy Services, L.P., CPV Cana, Ltd., Mirant Corporation, and South Pond Energy Park, LLC., that the RFP process leading to its self-build selections at both plant

sites was flawed, FPL, on April 22, 2002, filed an emergency motion to hold the need determination cases in abeyance, so that it could have additional time to issue a supplemental RFP that would address the intervenors' complaints. Order No. PSC-02-0703-PCO-EI at 1-2.

3. FPL's emergency motion was granted, it solicited new RFPs, which were also evaluated by FPL, which evaluation, once again, resulted in FPL determining that its self-build options were the most cost-effective at both plant sites. Subsequently, on July 16, FPL filed amended petitions for determination of need at both plant sites, which petitions are currently before this Commission.

4. On July 11, 2002, Prehearing Officer Commissioner Deason entered his Order No. PSC-02-0934-PCO-EI granting FACT's amended petition to intervene stating, in part:

In its amended Petition, FACT states that it is a statewide, non-partisan, grassroots public interest organization, ". . . representing the interests of its members in taxpayer, consumer, healthcare, environmental and public utility issues, among others." FACT alleges that a number of its members are retail residential customers of FPL, whose substantial interests will be affected by the outcome of these need determination dockets. FACT provided the names and addresses of 6 FACT members who are retail electric customers of FPL, but asserted that other FACT members are also retail customers of FPL. FACT asserts that the Commission's decision in these dockets will affect the rates its members' pay to FPL for electricity, and therefore they have an interest in the Commission's determination whether FPL has proposed the most-cost effective means to acquire additional generating capacity. FACT also points out that the Commission must consider whether FPL has taken all reasonably available conservation measures to avoid or defer the need for new generating capacity. FACT states that; "[f]ailure to implement cost-effective conservation measures in lieu of building new power plants will, by definition, increase customer rates more than is otherwise necessary."

In its Amended Petition to Intervene, FACT has adequately alleged that the substantial interests of a substantial number of its members may be affected by the Commission's decision in these dockets, and that those interests are both the type of interest the Commission's need determination proceedings are designed to

protect and the type of interest FACT is entitled to represent on behalf of its members. For these reasons, FACT's Amended Petition to Intervene is granted. (Emphasis supplied.)

5. Following the ordering paragraphs of Order No. PSC-02-0934-PCO-EI appeared the standard administrative and appellate review opportunity language required by Florida Law, which read:

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 the Commission Clerk and Administrative Services, 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.

6. As stated above, the order granting FACT intervenor status in these dockets was entered on July 11, 2002. The tenth day by which a party adversely affected by this order could have sought reconsideration by the full Commission ran on July 21, 2002 without FPL, or

any other party, seeking review of Commissioner Deason's order. Likewise, the 30 day period in which to seek appellate review to the Florida Supreme Court expired without FPL seeking such review. To date, no party, including FPL has sought administrative or appellate review of Order No. PSC-02-0934-PCO-EI and the time for doing both has expired. Consequently, FACT has been a party to these docket since July 11, 2002 and remains so by virtue of an order that could have been reviewed, but which was not.

7. FPL's petitions in these dockets were filed pursuant to Section 403.519, Florida Statutes, which reads in its entirety:

403.519 Exclusive forum for determination of need.--On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act. The commission shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed electrical power plant will be located. The notice shall be at least one-quarter of a page and published at least 45 days prior to the scheduled date for the proceeding. The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(2)(a)2. An order entered pursuant to this section constitutes final agency action.

(Emphasis supplied.)

8. Pursuant to Order No. PSC-02-0992-PCO-EI, (the order "establishing procedure," amongst other things), the parties to the case were to file their preliminary list of issues by July 23, 2002. The Commission Staff's July 24, 2002 Preliminary List of Issues is

attached as Exhibit 1. While listing the issues clearly required to be addressed by the Commission by the underlined portions of Section 403.519, Florida Statutes, above, the Staff's list does not identify FACT's party status in this case as an issue yet to be decided.

9. FPL's preliminary list of issues is attached as Exhibit 2. Like the Staff list of issues referenced in Paragraph 8 above, FPL's list focuses on those issues that must statutorily be addressed and answered by the Commission pursuant to Section 403.519, Florida Statutes, and does not list the party status of FACT as a continuing issue.

10. On August 1, 2002, FPL served upon FACT its First Request for Production of Documents to the Florida Action Coalition Team (Nos. 1-15), a copy of which is attached as Exhibit 3.

11. Also on August 1, 2002, FPL served upon FACT its First Set of Interrogatories to the Florida Action Coalition Team (Nos. 1-13), a copy of which is attached as Exhibit 4.

12. On August 8, 2002, FPL served upon FACT its Amended Notice of Taking Deposition Duces Tecum, a copy of which is attached as Exhibit 5.

13. Thereafter, on August 12, 2002, FACT served FPL, by both facsimile and U.S. Mail, with FACT's objections to FPL's First Request for Production of Documents and its First Set of Interrogatories, which are attached, respectively, as Exhibits 6 and 7.

14. On August 19, 2002, FACT served upon FPL its Objections to FPL's Amended Notice of Taking Deposition Duces Tecum, a copy of which is attached as Exhibit 8.

15. On August 21, 2002 FACT served upon FPL its Responses to First Request for Production of Documents and First Set of Interrogatories and provided, amongst other responses, the names of an additional 6 FACT members, who are also FPL customers, as well as a number of documents reflecting FACT's organizational affiliations and public issue advocacy history. These documents are attached as consolidated Exhibit 9.

16. On August 21, 2002, FPL served upon FACT its Motions to Compel FACT to Respond to its First Set of Interrogatories and First Request for Production of Documents and Motion to Compel Intervenor's Deposition, which are attached, respectively, as Exhibits 10 and 11.

17. On August 23, FACT wrote FPL explaining that it would now attempt to file the instant pleading - Motion for Protective Order - on Monday, August 26, 2002, to be followed by responses to FPL's two motions to compel by the close of business, Wednesday, August 28, 2002. A copy of that letter is attached as Exhibit 12.

MOTION FOR PROTECTIVE ORDER

ARGUMENT

FPL failed to timely challenge the Commission order granting FACT party status

18. As cited to above, on July 11, 2002, Prehearing Officer Commissioner Deason entered Order No. PSC-02-0934-PCO-EI granting FACT's amended petition to intervene. The order was neither qualified in its grant of party status to FACT, nor did it establish an obligation that FACT "prove up" the allegations in its amended petition to intervene at final hearing. In fact, the only qualified portions of the order related to the "boiler plate" provisions notifying the parties of their available review opportunities if dissatisfied with the order. That is, the "boiler

plate” advised that review was available, but stressed that such review had to be both timely sought and with the appropriate body.

19. Section 120.569(1), Florida Statutes, requires this Commission, and all applicable agencies, to give parties notice of all orders published in the proceedings they are in, and to make the parties aware of all administrative and judicial review available to them from orders adversely affecting them, as well as the procedures to be followed in seeking review and the applicable time limitations for seeking such review. This statute is the basis for the “boiler plate” review language discussed above. This section reads as follows:

120.569 Decisions which affect substantial interests.--

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.

(Emphasis supplied.) As cited in Paragraph 5 above, Order No. PSC-02-0934-PCO-EI specifically notified FPL, or any other adversely affected party, that it had ten days to seek reconsideration of a Prehearing Officer’s order, or to seek judicial review by the Florida Supreme Court, pursuant to Rule 9.100, Florida Rules of Appellate Procedure, which rule allows 30 days from order rendition to seek review. Again, FACT has not been given notice that FPL elected to seek review of Commissioner Deason’s order, either by the full Commission, or at the Florida

Supreme Court, and can find no evidence that FPL availed itself of those routes to challenge FACT's grant of party status.

20. It should be noted that FPL's failure to timely avail itself of the review procedures immediately available to it does not preclude FPL from seeking review of FACT's party status on review of the Commission's final order at the Florida Supreme Court. In fact, the Commission's standard "boiler plate" review language puts FPL and others on notice that judicial review to the courts is typically only available on an interlocutory basis "if review of the final agency action will not provide an adequate remedy." By case law, such a showing usually requires a demonstration to the court that the petitioner would suffer "irreparable harm" if the order below were not reversed prior to entry of the final agency action. Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097 (Fla. 1987). FACT would submit that FPL would likely have had great difficulty in making such a case of irreparable harm to the Supreme Court by the mere existence of FACT as a party in these proceedings. FPL's difficulty in carrying this burden would seem especially difficult given FACT is on the record as saying it will not offer the testimony of any witness, and, in fact, has missed the August 20, 2002 deadline for offering such prefiled witness testimony in any event. Consequently, FACT is left with the task of "hurting" FPL's case through the adoption of issues in the case and through cross-examination!

21. Florida courts have recognized the necessity for finality in administrative orders, just as in judicial orders. In Peoples Gas System, Inc. v. Mason, 187 So.2d 335 (Fla. 1966), the Court stated:

The effect of these decisions is that orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule

assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.

While it's true that Peoples Gas involved this Commission effectively changing a final order some four and one-half years later, the principle of finality and certainty is equally applicable to non-final orders and the situation at hand. If the review provisions contained in Order No. PSC-02-0934-PCO-EI were not applicable to the sole decision made in the order - namely, the granting of party status to FACT - what could they have been in reference to? FACT was granted intervenor status by the order, FPL failed to seek review of that party status, or to seek a prehearing evidentiary hearing on the issue, or to seek qualified party status for FACT subject to proof of standing at final hearing, as it might have. Consequently, FACT should now be entitled to rely on that unchallenged order.

22. FPL will undoubtedly assert that proof of party standing is always subject to being heard at final hearing and will likely cite to any number of Division of Administrative Hearings (DOAH) cases in support of that contention. FACT would submit, however, that all of the cases it could find suggesting that contested standing automatically had to be "proven up" at final hearing, in fact, said no such thing and are both factually and legally distinguishable from the instant case and, likely, all Commission cases.

23. In its Motion to Compel Intervenor's Deposition, FPL, at page 3, cites to Edgewater Beach Owners Ass'n, Inc. v. Bd. of County Commissioners of Walton Co., 1995 WL 1052993 (DOAH) Case No. 95-0437DRI), *on remand from* Edgewater Beach Owners Ass'n, Inc.

v. Bd. of County Commissioners of Walton Co., 645 So. 2d 541, 543 (Fla. 1st DCA 1994) for the proposition that “an administrative law judge found, on remand from the First District Court of Appeal, that a petitioner lacked standing to appeal a development order because ‘the greater weight of the evidence’ showed the petitioner had failed to present facts necessary to ‘prove up’ the petitioner’s allegations of standing that the appellate court initially found to be sufficient.” While fundamentally true, this recitation doesn’t tell the complete story, and, FACT would suggest, could leave the Commission with the false impression that the Court required that standing be demonstrated in that case, or that it requires it in all similar cases.

24. Edgewater started when the Edgewater Beach Owners Association filed a petition with the Florida Land and Water Adjudicatory Commission (FLWAC) challenging a Walton County resolution reviving an expired development of regional impact order. After FLWAC dismissed the Owners Association’s amended petition for lack of standing, the Owners Association took an appeal, which resulted in the First District Court of Appeal reversing and remanding on the basis that it had “concluded that the amended petition contained sufficient factual allegations to show that petitioner was ‘an owner of . . . affected property’ within the meaning of the law, and thus it had standing to bring the action.” It was only after the Court remanded the case to FLWAC that it, in turn, forwarded the case to DOAH for hearing.

25. The Owners Association’s basis for standing rested on its retention pond being affected by the challenged development. At hearing the administrative law judge determined that the retention pond would not be affected by the development and that it, therefore, lacked standing to challenge the project. It is instructive to note, as did the law judge, that, as the “party challenging the amended development order, petitioner [Owners Association] bears ‘ both the

ultimate burden of persuasion and the burden of going forward.” FACT would suggest that being the moving party, as opposed to being a mere intervenor in a case where FPL carries the burden of showing the need for its sought after generating units, is critically important because whether there was any relief at all in that case depended upon whether there was standing for the Owners Association, i.e., whether their retention pond was affected. FACT’s standing plays no such critical role in the instant case and, more importantly, there is a question whether the Owners Association had the benefit of an unchallenged order granting party status to the case, as does FACT here. In fact, it appears clear that the Owners Association had no such unqualified order granting it intervenor status, since it was not an intervenor. Furthermore, it appears that DOAH, as a general practice, typically grants challenged intervenors (1) initial party status subject to proof of standing at final hearing and (2) pursuant to orders providing no notice of opportunity for reconsideration or judicial review.

26. The second DOAH case cited by FPL in its Motion to Compel Intervenor’s Deposition, Ocala/Silver Springs Hilton v. Ocala Park Centre Maintenance Assoc., 1997 WL 1052617 (DOAH Case No. 95-3848, April 24, 1997) illustrates what appears to be a common DOAH practice of granting intervenor or party status with the specific qualification that standing be proven at the final or formal hearing. In Ocala/Silver Springs Hilton, the administrative law judge wrote at page 3: “On November 8, 1996, an Order was entered denying both motions to dismiss without prejudice, but requiring Hilton and the Association to each prove-up their respective standing at formal hearing.” Although the order in question was neither available on the DOAH website, nor in its current files due to the relative age of the case, more recent

examples of such orders were found illustrating what appears to be a common DOAH practice that is not followed at the Commission.

27. As reflected in the attached Exhibits 13 and 14, respectively, in the case of William Howard Solomon v. Florida Communities Trust (DOAH Case No. 00-2089), Administrative Law Judge Hood entered orders granting intervenor status to the City of Jacksonville and the Mandarin Community Club, but with the specific ordering paragraph qualification in each order that: “the motion to intervene is granted subject to proof of standing during the final hearing.” Furthermore, for whatever reason, these orders, unlike Commission orders, contain no recitation of what administrative or judicial review rights are available to a party adversely affected by the orders. Subsequently, Judge Hood’s Recommended Order in the case at page 4 reflected the preliminary and conditional grant of intervenor status for the Mandarin Community Club with the statement: “An order dated July 31, 2000, granted the MCC’s Motion to Intervene subject to proof of standing during final hearing and denied the Request for Preliminary Hearing on Standing. See Order in William Howard Solomon v. Florida Communities Trust at page 4, which is attached as Exhibit 15.

28. While FACT is unable, to date, to locate more administrative law judge orders specifically granting qualified intervenor status with the requirement that standing be proved at final hearing, and without no administrative and appellate review options provided, FACT was able to locate 12 additional DOAH recommended or final orders in which the “preliminary statement” included a recitation that “Intervention was granted subject to proof of standing at final hearing.” The cover pages and initial relevant pages leading to this qualified intervenor statement in each of these 12 orders are attached as consolidated Exhibit 16. The referenced

statement appears on the last included page of each order and is identified with a vertical line in the adjacent right hand margin.

29. The Commission has the authority, indeed the obligation, pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, to issue protective orders where appropriate.

The rule provides:

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred in relation to the motion.

30. Inasmuch as FPL has completely failed to preserve its ability to challenge FACT's party status, the issue of the relevancy of its discovery directed to FACT should be measured solely by whether the discovery is within the scope of the remaining issues in the case.

Rule 1.280(b), Florida Rules of Civil Procedure provides:

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(Emphasis supplied.)

31. In conclusion, FPL could have sought reconsideration of Commissioner Deason's order granting FACT intervenor status, but chose not to. FPL could have sought appellate review of the order, but chose not to. FPL could have requested that either Commissioner Deason or the full Commission grant FACT conditional intervenor status, subject to "proof of standing during the final hearing" as is stated in Judge Hood's attached orders and referenced in the other 13 attached DOAH orders, but it did not. The attached DOAH orders clearly and specifically reserved jurisdiction over the disputed question of standing, whereas Commissioner Deason's order granting FACT standing clearly does not. The Commission should find that FPL waived any further right at the Commission proceedings (clearly FPL can address the issue on any appeal of the Commission's final order in these cases) to dispute FACT's party status by not electing to utilize the review options presented to it.

32. If the Commission determines that the standing issue has been waived, then it should look solely to Section 403.519, Florida Statutes, to determine whether FPL's discovery to FACT is permissible. The key language of the statute requiring decisions of the Commission relative to the generating plant "need" states:

In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant.

If attention is paid to the issues of (1) need for electric system reliability and integrity, (2) the need for adequate electricity at a reasonable cost, (3) whether the proposed plant is the most cost-effective alternative available and (4) consideration of the conservation measures taken by, or reasonably available to, the applicant or its members which might mitigate the need for the proposed plant, the Commission will easily see that none of the discovery directed at FACT is either (1) relevant to the subject matter of the pending action, or (2) reasonably calculated to lead to the discovery of admissible evidence. Having to prepare and present documents, write interrogatory responses and prepare for and sit for a deposition will necessarily result in annoyance, oppression and undue burden and expense to FACT of the type protective orders are designed to protect against. Under these circumstances the Commission should order "that the discovery not be had."

ALTERNATIVE MOTION FOR ORDER LIMITING DISCOVERY

ARGUMENT

33. In the event the Commission determines that FPL did not waive its ability to question FACT's party status by ignoring the review options afforded by Commissioner Deason's order, then the Commission should still protect FACT from annoyance, oppression and undue burden and expense by strictly limiting any FPL discovery to the issue of "associational standing" and any other issues related to the core purpose of these hearings under Section 403.519, Florida Statutes. FACT has, above, reiterated the issues raised by Section 403.519, Florida Statutes, and suggests that none of the discovery presently directed to FACT is relevant to those issues, or reasonably calculated to lead to the discovery of admissible evidence related to those issues.

34. If "associational standing" is still viable for FPL's discovery, what are the issues to be considered in determining whether the discovery is permissible? In Florida Home Builders Ass'n v. Dept. Of Labor, 412 So.2d 351 (Fla. 1982), the Florida Supreme Court established the elements of proof for associational standing, saying:

After reviewing the legislative history and purpose of chapter 120, we have concluded that a trade or professional association should be able to institute a rule challenge under section 120.56 even though it is acting solely as the representative of its members. To meet the requirements of section 120.56(1), an association must demonstrate that a substantial number of its members, although not necessarily a majority, are "substantially affected" by the challenged rule. Further, the subject matter of the rule must be within the association's general scope of interest and activity, and the relief requested must be of the type appropriate for a trade association to receive on behalf of its members.

As reflected in NAACP, Inc. v. Florida Board of Regents, 1D00-3138 (Fla. App. 1 Dist. 2002), the concept of “associational standing” has been greatly expanded to include not just trade and professional associations in rule challenges, but other similar challenges by environmental, taxpayer and other associations, not only in rule challenges, but in Section 120.569, Florida Statutes, proceedings involving “decisions which affect substantial interests.”

35. If FPL is to be allowed to test FACT’s associational standing, then FACT would urge the Commission to, pursuant to Rule 1.280(c)(4), Florida Rules of Civil Procedure, order “(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters.” Specifically, and first, FACT would request that the Commission issue its detailed order limiting discovery to these specific subjects:

(a) Whether FACT is an “association” within the meaning of Florida Home Builders and subsequent case law evolved from it;

(b) The total number of coalition team members currently associated or affiliated with FACT;

(c) The number of coalition team members that are FPL customers and, thus, will be “substantially affected” by the Commission’s determination on the “need” of the two plants and whether they are the most cost-effective alternative available;

(d) Whether the “subject matter” of these proceedings, namely the determination of the need for these generating units and their cost-effectiveness is within FACT’s “general scope of interest and activity;” and

(e) Whether FACT seeking to ensure that the Commission makes the correct decision on the “need” for the generating units and that the units are the most cost-effective is of a type relief (cost-effective and appropriate) for it to receive on behalf of its members.

36. Conversely, FACT would request that the Commission protect it from annoyance, oppression and undue burden and expense by specifically prohibiting FPL from seeking discovery on the following issues, which are irrelevant to the issues, privileged or both:

(a) A listing of the names and addresses of all FACT members, or all FACT members that are customers of FPL;

(b) Any questions as to FACT’s financial condition, or sources of funding;

(c) Questions related to the hiring of FACT’s attorney of record in these dockets, Michael B. Twomey, the basis for his compensation and the person or persons responsible for compensating him, which questions are privileged as attorney-client and are not relevant to any of the issues in this case, whether the focus be the need determination or the limited questions involving “associational standing;” and

(d) Questions related to how FACT decided to “intervene in FPL’s Determination of Need proceeding”

37. Forcing FACT to answer questions at deposition, through interrogatory responses, or through production of documents that are not directly relevant to either the “need determination” issues or the “associational standing issues” or questions that appear reasonably calculated to lead to the discovery of admissible evidence on these issues will unnecessarily subject FACT to annoyance, oppression, and undue burden or expense.

38. Accordingly, FACT would respectfully request that the Commission, if it allows

discovery on the issue of associational standing, enter its written order specifically delineating what FPL may permissibly ask and not ask pursuant to the requests contained in Paragraphs 35 and 36 above.

REQUEST FOR STAY

ARGUMENT

39. The Commission should grant a stay of discovery when the discovery being sought is alleged to be impermissibly annoying, burdensome, embarrassing, oppressive, or unduly expensive and when the time that the discovery will be precluded pending resolution of motions seeking to limit the discovery is relatively limited in duration. Deltona Corporation v. Bailey, 336 So.2d 1163 (Fla. 1976). FACT has previously communicated to FPL FACT's objections to all FPL's discovery, including the Bach deposition and indicated that it will not make Ernie Bach available for deposition on August 28, 2002, and will not provide further responses to FPL's First Request for Production of Documents or First Set of Interrogatories until directed to do so by order of this Commission. Canella v. Bryant, 235 So.2d 328 (Fla. 4th DCA 1970);

WHEREFORE, the Florida Action Coalition Team respectfully requests that the Florida Public Service Commission enter its written order granting FACT a Protective Order protecting it from all pending FPL discovery, for the reasons stated in the body of this motion; or, alternatively, an Order strictly limiting FPL's discovery to the core "need determination" issues in this case, as well as those strictly related to the "associational standing" issue, as requested in the body of this motion. Lastly, FACT requests that the Commission grant it an immediate stay

from having to respond to FPL's pending discovery requests pending the Commission's final resolution of FACT's instant motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael B. Twomey", written over a horizontal line.

Michael B. Twomey
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miketwomey@talstar.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been transmitted electronically, by hand delivery* and/or by U.S. Mail this 26th day of August, 2002:

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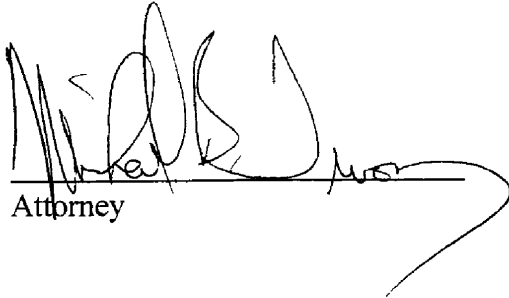
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Miami, FL 33131-2398



Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition To Determine Need For
an Electrical Power Plant in Martin County
by Florida Power & Light Company.**

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)
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)
)
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Docket No. 020262-EI

**In re: Petition To Determine Need For
an Electrical Power Plant in Manatee County
by Florida Power & Light Company.**

Docket No. 020263-EI

Served: August 26, 2002

APPENDIX TO

**FACT'S MOTION FOR PROTECTIVE ORDER; MOTION FOR ORDER
LIMITING DISCOVERY; AND MOTION FOR STAY IN RELATION TO
FLORIDA POWER & LIGHT COMPANY'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND FIRST SET OF INTERROGATORIES**

DOCUMENT NUMBER DATE

09004 AUG 26 02

FPSC-COMMISSION CLERK

Exhibit No. 1

Aug 21, 2002

STAFF'S PRELIMINARY LIST OF ISSUES - FPL NEED DETERMINATION
DOCKET NOS. 020262-EI AND 020263-EI

August 21, 2002

- ISSUE 1: Is the output of Florida Power & Light Company's Martin Unit 8 fully committed for use by Florida retail electric customers?
- ISSUE 2: Is the output of Florida Power & Light Company's Manatee Unit 3 fully committed for use by Florida retail electric customers?
- ISSUE 3: Does Florida Power & Light Company have a need for Martin Unit 8, taking into account the need for electric system reliability and integrity?
- ISSUE 4: Does Florida Power & Light Company have Manatee Unit 3, taking into account the electric system reliability and integrity?
- ISSUE 5: Does Florida Power & Light Company have a need for Martin Unit 8, taking into account the need for adequate electricity at a reasonable cost?
- ISSUE 6: Does Florida Power & Light Company have Manatee Unit 3, taking into account the need for adequate electricity at a reasonable cost?
- ISSUE 7: Is Florida Power & Light Company's Martin Unit 8 the most cost-effective alternatives available?
- ISSUE 8: Is Florida Power & Light Company's Manatee Unit 3 the most cost-effective alternatives available?
- ISSUE 9: Are there any conservation measures taken by or reasonably available to Florida Power & Light Company that might mitigate the need for Martin Unit 8?
- ISSUE 10: Are there any conservation measures taken by or reasonably available to Florida Power & Light Company that might mitigate the need for Manatee Unit 3?
- ISSUE 11: Has Florida Power & Light Company adequately ensured the availability of fuel commodity and transportation to serve Martin Unit 8?

002332

- ISSUE 12: Has Florida Power & Light Company adequately ensured the availability of fuel commodity and transportation to serve Manatee Unit 3?
- ISSUE 13: Did Florida Power & Light Company properly and accurately value the use of existing infrastructure at the Martin plant site in determining the construction cost of Martin Unit 8?
- ISSUE 14: Did Florida Power & Light Company properly and accurately value the use of existing infrastructure at the Manatee plant site in determining the construction cost of Manatee Unit 3?
- ISSUE 15: In its evaluation of Martin Unit 8, Manatee Unit 3, and projects filed in response to its Supplemental Request for Proposals, issued on April 26, 2002, did Florida Power & Light Company properly and accurately evaluate transmission interconnection and integration costs?
- ISSUE 16: Was Florida Power & Light Company's decision to apply an equity penalty cost to projects filed in response to its Supplemental Request for Proposals appropriate? If so, was the amount properly calculated?
- ISSUE 17: Did Florida Power & Light Company's Supplemental Request for Proposals, issued on April 26, 2002, satisfy the requirements of Rule 25-22.082, Florida Administrative Code?
- ISSUE 18: Was Florida Power & Light Company's decision not to consider proposals to construct generating capacity on property owned by Florida Power & Light Company appropriate?
- ISSUE 19: Was the process used by Florida Power & Light Company to evaluate Martin Unit 8, Manatee Unit 3, and projects submitted in response to its Supplemental Request for Proposals, issued on April 26, 2002, appropriate?
- ISSUE 20: Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition for determination of need for Martin Unit 8?
- ISSUE 21: Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition for determination of need for Manatee Unit 3?

Exhibit No. 2

**Florida Power & Light Company's
Preliminary Issue List
Docket Nos. 020262-EI, 020263-EI
April 10, 2002**

- ISSUE 1: Does Florida Power & Light Company have a need for the proposed generating units, taking into account the need for electric system reliability and integrity?
- ISSUE 2: Does Florida Power & Light Company have a need for the proposed generating units, taking into account the need for adequate electricity at a reasonable cost?
- ISSUE 3: Are Martin Unit 8 and Manatee Unit 3 the most cost-effective alternatives available to meet Florida Power & Light Company's need?
- ISSUE 4: Are there conservation measures taken by or reasonably available to Florida Power & Light Company that might mitigate the need for the proposed generating units?
- ISSUE 5: Has Florida Power & Light Company provided adequate assurances regarding the availability of fuel to serve the proposed generating units?
- ISSUE 6: Has Florida Power & Light Company complied with Rule 25-22.082, Florida Administrative Code, in issuing and evaluating its Request for Proposals?
- ISSUE 7: Does Rule 25-22.082, Florida Administrative Code, require Florida Power & Light Company to allow RFP respondents to propose to construct generating capacity on property owned by FPL?
- ISSUE 8: Was the process used by Florida Power & Light Company to evaluate RFP proposals and FPL self-build options appropriate?
- ISSUE 9: Did FPL properly value the use of existing infrastructure in determining the cost of its proposed generating units?
- ISSUE 10: Did FPL reasonably account for required transmission upgrades in its evaluation of RFP proposals and Martin Unit 8 and Manatee Unit 3?
- ISSUE 11: Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petitions for determination of need for the proposed generating units?

Exhibit No. 3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need)
for Proposed Electrical Power Plant in)
Martin County of Florida Power and)
Light Company)
_____)

DOCKET NO. 020262-EI

In re: Petition for Determination of Need)
For Proposed Electrical Power Plant in)
Manatee County of Florida Power and)
Light Company)
_____)

DOCKET NO. 020263-EI

Filed: August 1, 2002

**FLORIDA POWER & LIGHT COMPANY'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO THE FLORIDA ACTION COALITION TEAM (NOS. 1-15)**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, Florida Power & Light Company ("FPL"), hereby serves the following request for production of documents upon the Florida Action Coalition Team ("FACT"), and requests that responsive documents be produced within twenty (20) days, pursuant to the time frames provided for in these proceedings.

DEFINITIONS

1. "You," "yours" and/or "yourselves" means the Florida Action Coalition Team ("FACT"), and any attorney, employee, agent, representative or other person acting or purporting to act on the behalf of FACT, including all persons who will offer testimony on your behalf in this proceeding.

2. "Person" or "persons" means all natural persons and entities, including but not limited to: corporations, companies, partnerships, limited partnerships, joint ventures, trusts, estates, associations, public agencies, departments, bureaus or boards.

3. “Document or documents” means “documents” as defined in Rule 1.350 of the Florida Rules of Civil Procedure. In addition, the words “document” or “documents” shall mean any writing, recording, computer-stored information, or photograph in your possession, custody, care or control, which pertain directly or indirectly, in whole or in part, to any of the subjects listed below, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, e-mails, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, computer discs, microfilms, video tapes or tape recordings.

4. “FPL” means Florida Power & Light Company.

5. “FACT” means Florida Action Coalition Team.

6. “FPL’s Determination of Need proceedings” means the present Florida Public Service Commission proceedings in Dockets 020262-EI and 020263-EI.

7. “Identify” shall mean: (1) when used with respect to a person, to state the person’s full name, present or last known business address; and present or last known employer and position; (2) when used in respect to a document, to describe the document by character (e.g., letter, report, memorandum, etc.), author, date, and to state its present location and custodian; (3) when used with respect to an oral communication, to identify the persons making and receiving the communication, the approximate date of and time of the communication, and a summary of its content or substance; and (4) when used with respect to a power generation project, to state the name of the project, its megawatt size, its location, its fuel type and the generating technology it employs.

8. “Witness” means any person, including but not limited to expert witnesses, whom you intend to call to testify in this proceeding.

9. “Relate to” shall mean contain, discuss, describe or address.

10. “All” means all or any.

11. The singular of any word contained herein shall include the plural and vice versa; the terms “and” and “or” shall be both conjunctive and disjunctive; and the term “including” means “including without limitation.”

INSTRUCTIONS

12. Scope of Production. In responding to this request to produce, produce all responsive documents, including any and all non-identical copies of each such document.

13. Manner of Objections and Inability to Respond. If you object to a part of a request and refuse to respond to that part, state your objection and answer the remaining portion of that request. If you object to the scope of a request and refuse to produce documents for that scope, state your objection and produce documents for the scope you believe is appropriate.

14. If any of the requests cannot be responded to in full after exercising due diligence to secure the requested documents, please so state and respond and produce documents to the extent possible, specifying your inability to respond further. If your response or production is qualified or limited in any particular way, please set forth the details and specifics of such qualification or limitation.

15. Privileged Information or Documents. In the event you wish to assert attorney/client privilege or the work product doctrine, or both, or any other claim of privilege, then as to such documents allegedly subject to such asserted privileges, you are requested to supply an identification of such documents, in writing, with sufficient specificity to permit the Prehearing Officer or Commission to reach a determination in the event of a motion to compel as to the applicability of the asserted objection, together with an indication of the basis for the

assertion of the claim of attorney/client privilege or the work product doctrine, or any other claim of privilege. The identification called for by this instruction shall include the nature of the document (e.g., interoffice memoranda, correspondence, report, etc.), the sender or author, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list associated with such document, and a summary statement of the subject matter of the document in sufficient detail to permit the Court to reach a determination in the event of a motion to compel.

16. Computer-Generated Documents. If a requested document is on computer or word processing disc or tape, produce an electronic copy of the document and a printout of the document.

17. Organization of Documents. With respect to the documents produced, you shall produce them as they are kept in the usual course of business, labeling them to correspond with each numbered paragraph of this Request in response to which such documents are produced. All pages now stapled or fastened together and all documents that cannot be copied legibly should be produced in their original form.

DOCUMENTS REQUESTED

1. Please provide all documents, including, but not limited to, a charter or other statement of purpose for FACT.

2. Please provide a list of the exact current membership of FACT.

3. Please provide the name and address of each FACT member who is a retail residential customer of FPL.

4. Please provide a list of FACT members who are currently parties in FPL's present Determination of Need proceedings.

5. Please provide all documents including, but not limited to, correspondence and other communications between FACT and each FACT member who is a retail residential customer of FPL.

6. Please provide a list of the officers of FACT and all documents relating to the selection process for those officers.

7. Please provide all documents that relate to lobby registrations filed by FACT.

8. Please provide all documents related to the following sources of funding for FACT: (a) general funding and (b) funding for FACT's intervention in FPL's Determination of Need proceedings.

9. Please provide all documents relating to funding for FACT that is derived from retail residential customers of FPL, from other FACT members, and from non-members of FACT.

10. Please provide all documents showing the approximate percentage of FACT's budget that is contributed by each of FACT's funding sources.

11. Please provide all documents relating to FACT's engagement of the services of Michael B. Twomey, including the basis for his compensation and the parties responsible for his compensation.

12. Please provide all documents relating to the history of FACT's involvement in Florida Public Service Commission proceedings and in other types of regulatory proceedings.

13. Please provide copies of newsletters or other informational materials sent to FACT members, including any such materials that address FPL's Determination of Need proceedings or the Determination of Need proceedings of any other Florida utility.

14. Please provide all documents relating to a vote or other approval by the FACT membership of a decision to petition to intervene in FPL's present Determination of Need proceedings.

15. Please provide copies of all correspondence or other communications between (a) FACT and any other party in FPL's Determination of Need proceedings and (b) FACT and the Florida Public Service Commission in connection with FPL's Determination of Need proceedings.

Respectfully submitted this 1st day of August, 2002.

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By: Elizabeth C. Daley
John T. Butler, P.A.
Florida Bar No. 283479
Elizabeth C. Daley
Florida Bar No. 0104507

CERTIFICATE OF SERVICE
Docket Nos. 020262-EI and 020263-EI

I HEREBY CERTIFY, that on this 1st day of August, 2002, a copy or courtesy copy (*) of Florida Power & Light Company's First Request for Production of Documents to FACT was served electronically (**) and by U.S. Mail to the following:

Martha Carter Brown, Esq.**
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By: Elizabeth C. Daley
Elizabeth C. Daley

Exhibit No. 4

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need)
for Proposed Electrical Power Plant in)
Martin County of Florida Power and)
Light Company)
_____)

DOCKET NO. 020262-EI

In re: Petition for Determination of Need)
For Proposed Electrical Power Plant in)
Manatee County of Florida Power and)
Light Company)
_____)

DOCKET NO. 020263-EI

Filed: August 1, 2002

**FLORIDA POWER & LIGHT COMPANY'S
FIRST SET OF INTERROGATORIES
TO FLORIDA ACTION COALITION TEAM (Nos. 1-13)**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, Florida Power & Light Company ("FPL") hereby propounds the following interrogatories on the Florida Action Coalition Team ("FACT") and requests that they be answered separately, fully and under oath within twenty (20) days, pursuant to the time frames provided for in these proceedings.

DEFINITIONS

1. "You," "yours" and/or "yourselves" means FACT and any attorney, employee, agent, representative or other person acting or purporting to act on the behalf of FACT, including all persons who will offer testimony on your behalf in this proceeding.

2. "Person" or "persons" means all natural persons and entities, including but not limited to: corporations, companies, partnerships, limited partnerships, joint ventures, trusts, estates, associations, public agencies, departments, bureaus or boards.

3. “Document or documents” means “documents” as defined in Rule 1.350 of the Florida Rules of Civil Procedure. In addition, the words “document” or “documents” shall mean any writing, recording, computer-stored information, or photograph in your possession, custody, care or control, which pertain directly or indirectly, in whole or in part, to any of the subjects listed below, or which are themselves listed below as specific documents, including, but not limited to: correspondence, memoranda, notes, messages, e-mails, diaries, minutes, books, reports, charts, ledgers, invoices, computer printouts, computer discs, microfilms, video tapes or tape recordings.

4. “FPL” means Florida Power & Light Company.

5. “FACT” means Florida Action Coalition Team.

6. “FPL’s Need Determination proceedings” means the present Florida Public Service Commission proceedings in Dockets 020262-EI and 020263-EI.

7. “Identify” shall mean: (1) when used with respect to a person, to state the person’s full name, present or last known business address; and present or last known employer and position; (2) when used in respect to a document, to describe the document by character (e.g., letter, report, memorandum, etc.), author, date, and to state its present location and custodian; (3) when used with respect to an oral communication, to identify the persons making and receiving the communication, the approximate date of and time of the communication, and a summary of its content or substance; and (4) when used with respect to a power generation project, to state the name of the project, its megawatt size, its location, its fuel type and the generating technology it employs.

8. “Witness” means any person, including but not limited to expert witnesses, whom you intend to call to testify in this proceeding.

9. "Relate to" shall mean contain, discuss, describe or address.
10. "All" means all or any.

INSTRUCTIONS

11. If any of the following interrogatories cannot be answered in full after exercising due diligence to secure the information, please so state and answer to the extent possible, specifying your inability to answer the remainder, and state whatever information you have concerning the unanswered portion. If your answer is qualified or limited in any respect, please set forth the details of such qualifications and/or limitations.

12. If you object to fully identifying a document or oral communication because of a privilege, you must nevertheless provide the following information, unless divulging the information would disclose the privileged information:

- a. the nature of the privilege claimed (including work product);
- b. the date of the document or oral communication;
- c. if a document; its type (correspondence, memorandum, facsimile etc.), custodian, location, and such other information sufficient to identify the document for a subpoena duces tecum or a document request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;
- d. if an oral communication; the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
- e. the general subject matter of the document or the oral communication.

13. If you object to all or part of any interrogatory and refuse to answer that part, state your objection, identify the part to which you are objecting, and answer the remaining portion of the interrogatory.

14. Whenever an interrogatory calls for information which is not available to you in the form requested, but is available in another form, or can be obtained at least in part from other data in your possession, so state and either supply the information requested in the form in which it is available, or supply the data from which the information requested can be obtained.

15. The singular shall include the plural and vice versa; the terms “and” and “or” shall be both conjunctive and disjunctive; and the term “including” means “including without limitation.”

16. If any interrogatory fails to specify a time period from which items should be listed, identified or described, your answer shall include information from the previous three years.

17. These interrogatories shall be answered under oath by you or through your agent who is qualified to answer and who shall be fully identified, with said answers being served as provided pursuant to the Florida Rules of Civil Procedure or order of the Commission.

INTERROGATORIES

1. Please identify all fact witnesses you anticipate calling in this proceeding, and for each witness provide a description of the facts and conclusions to which each witness will testify.

2. Please identify all expert witnesses you expect to call at the hearing in this matter, and for each expert witness provide the witness's qualifications, a detailed summary of the witness's expected testimony, and a listing (name, docket number, jurisdiction, date) of all prior proceedings in which the witness has testified.

3. Please describe FACT's development, including the year in which same was organized, the state or country in which FACT was organized, and the names of the founders of the organization.

4. Please list the exact current membership of FACT.

5. Please list the name and address of each FACT member who is a retail residential customer of FPL.

6. Please list the name and address of each FACT member who is currently a party in FPL's Determination of Need proceedings.

7. Please list the name and address of each FACT officer and explain how the officers are selected.

8. Please describe FACT's financial condition, including a detailed description of each source of funding for FACT, including (a) general funding and (b) funding for FACT's intervention in FPL's Determination of Need proceedings.

9. Please list the approximate percentage of FACT's budget that is derived from each of the funding sources listed in Interrogatory No. 8.

10. Please explain how and when FACT engaged the services of Michael B. Twomey, including the basis for his compensation and the person or persons responsible for compensating him.

11. Please discuss in detail the history of FACT's involvement in Florida Public Service Commission proceedings and other types of regulatory proceedings.

12. Please describe any vote in which the FACT membership has approved FACT's intervention in FPL's Determination of Need proceeding.

13. Please describe in detail each and every way in which FACT believes that FPL has failed to demonstrate that the proposed Manatee and Martin units are the most cost-effective means of meeting its capacity needs.

Respectfully submitted this 1 day of Aug, 2002.

R. Wade Litchfield, Esq.
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Juno Beach, Florida 33408-0420
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By: Elizabeth C Daley
John T. Butler, P.A.
Florida Bar No. 283479
Elizabeth C. Daley
Florida Bar No. 0104507

CERTIFICATE OF SERVICE
Docket Nos. 020262-EI and 020263-EI

I HEREBY CERTIFY, that on this 1st day of August, 2002, a copy or courtesy copy (*) of Florida Power & Light Company's First Set of Interrogatories to FACT was served electronically (**) and by U.S. Mail to the following:

Martha Carter Brown, Esq.**
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Diane K. Kiesling, Esq.
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By: 
Elizabeth C. Daley

Exhibit No. 5

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need)
for Proposed Electrical Power Plant in)
Martin County of Florida Power and)
Light Company)
_____)

DOCKET NO. 020262-EI

In re: Petition for Determination of Need)
For Proposed Electrical Power Plant in)
Manatee County of Florida Power and)
Light Company)
_____)

DOCKET NO. 020263-EI

Filed: August 8, 2002

**FLORIDA POWER & LIGHT COMPANY'S
AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM**

TO: Michael B. Twomey, Esq.
P.O. Box 5256
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Telephone: 850-421-9530
FAX: 850-421-8543

PLEASE TAKE NOTE THAT, PURSUANT TO Florida Rule of Civil Procedure 1.310, Florida Power & Light Company ("FPL") will take the deposition upon oral examination of Ernie Bach, Executive Director of the Florida Action Coalition Team ("FACT"). The foregoing deposition will take place on **August 28, 2002, beginning at 10 a.m.**, before a representative of Esquire Deposition Services, a Notary Public or some other officer authorized by law to take depositions. The deposition will take place at the following location:

**Airport Business Center
4500 140th Avenue North, Suite 101
Clearwater, FL 33762**

(Telephone: 727-539-7002)

The deponent shall bring to his deposition copies of documents concerning the organization, officers, and membership of the Florida Action Coalition Team (“FACT”) and copies of documents concerning the decision by FACT members or representatives to intervene in FPL’s Determination of Need proceeding.

Said deposition is to be used for discovery purposes, for use at trial, or both, and will continue from day to day until complete. Individuals with disabilities needing a reasonable accommodation to participate in this proceeding should contact John T. Butler, Esq., at (305) 577-2939. If hearing impaired, call 1-800-955-8771 (TDD) or 1-800-955-8770 (V) via Florida Relay Service for assistance.

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Telephone: 305-577-2872
Facsimile: 305-577-7001

By:

John T. Butler, P.A.
Florida Bar No. 283479
Elizabeth C. Daley
Florida Bar No.

0104507

CERTIFICATE OF SERVICE
Docket Nos. 020262-EI and 020263-EI

I HEREBY CERTIFY, that on this 8th day of August, 2002, a copy or courtesy copy (*) of Florida Power & Light Company's Amended Notice of Taking Deposition of FACT representative was served electronically (***) and by U.S. Mail to the following:

Martha Carter Brown, Esq.** Legal Division Florida Public Service Commission
2540 Shumard Oak Boulevard Room 370 Tallahassee, Florida 32399-0850
mbrown@psc.state.fl.us D. Bruce May, Jr., Esq.** Karen D.
Walker Holland & Knight LLP 315 S Calhoun Street Suite 600 Tallahassee, Florida
32301 dbmay@hklaw.com

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Sheehan, P.A. 118 North Gadsden Street Tallahassee, Florida 32301
jmoylej@moylelaw.com Ernie Bach, Executive Director**
Florida Action Coalition Team P.O. Box 100 Largo, Florida 33779-0100 ernieb@gte.net

John W. McWhirter* McWhirter Reeves, McGlothlin, Davidson, Decker, Kaufman, & Arnold, P.A. 400 North Tampa Street, Suite 3350 Tampa, Florida 33602 Telephone: (813) 224-0866 Facsimile: (813) 221-1854 Vicki Gordon Kaufman* Timothy J. Perry McWhirter Reeves, McGlothlin, Davidson, Decker, Kaufman, & Arnold, P.A. 117 South Gadsden Street Tallahassee, Florida 32301 Telephone: (850) 222-2525 Facsimile: (850) 222-5606

By: _____
Elizabeth C. Daley

Exhibit No. 6

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power & Light Company.)	Docket No. 020262-EI
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)	
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In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power & Light Company.)	Docket No. 020263-EI
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)	
<hr/>)	Served: August 12, 2002

**FACT'S OBJECTIONS TO FLORIDA POWER & LIGHT
COMPANY'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

The Florida Action Coalition Team ("FACT") hereby submits the following objections to Florida Power & Light Company ("FPL") First Request for Production of Documents ("FPL's First Set").

I. Preliminary Nature of These Objections

The objections stated herein are preliminary in nature and are made at this time consistent with procedural Order PSC-02-0992-PCO-EI of the Florida Public Service Commission ("Commission"), which requires a respondent to raise objections or requests for clarification within ten days of receipt of discovery requests. Should additional grounds for objection be discovered as FACT develops its response, FACT reserves the right to supplement or modify its objections up to the time it serves its responses. Should FACT determine that a protective order is necessary regarding any of the requested information, FACT reserves the right to file a motion with the Commission seeking such an order at the time its response is due.

II. General Objections

These consolidated dockets involve the question whether the Commission should approve FPL's petitions for "need determinations" for new generation at its Martin and Manatee plant sites. As the petitioner in these need determination proceedings, FPL alone carries the affirmative burden of demonstrating that its proposed projects will satisfy the statutory need criteria set forth in Section 403.519, Florida Statutes.

FACT is an intervenor in these consolidated dockets. FACT will not support a witness in these consolidated dockets. FACT, consequently, has no affirmative burden to meet in these proceedings. Nonetheless, FPL has now served extensive and unduly burdensome discovery requests on FACT including these 15 requests to produce documents. FPL's extensive discovery requests are nothing more than a thinly-veiled effort to harass and punish FACT for intervening in these proceedings. FPL is clearly attempting to deflect the focus of these need determinations from the requisite review of FPL's projects to a wholly irrelevant review of FACT. FACT objects to all such discovery requests as irrelevant, immaterial, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Additionally, FACT objects to each and every one of the requests for documents that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. FACT in no way intends to waive such privileges or protections.

FACT objects to providing information that is proprietary, confidential business information without provisions in place to protect the confidentiality of the information. FACT has not had sufficient time to make a final determination of whether the discovery requests call for the disclosure of confidential information. However, if it determines that any of the discovery requests would require the disclosure of confidential information, FACT will either file a motion for protective order requesting confidential classification and procedures for protection or take other actions to protect the confidential information requested. FACT in no way intends to waive claims of confidentiality.

FACT objects to FPL's First Set to the extent that it calls for the creation of information, rather than the reporting of presently existing information, as purporting to expand FACT's obligation under the law.

FACT objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission and available to FPL through normal procedures.

FACT incorporates by reference all of the foregoing general objections into each of its specific objections set forth below as though stated therein.

III. Specific Objections

Requests for Production Nos. 1- 15.

FACT objects to each of these requests to produce on the grounds that they each seek information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. In addition, FACT objects to these requests to produce because they are an attempt to punish and otherwise harass FACT for intervening in these proceedings.

Lastly, FACT objects to these requests to produce to the extent they request documents protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, or any other applicable privilege or protection afforded by law.

Respectfully submitted this 12th day of August, 2002.

/s/ Michael B. Twomey
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been transmitted electronically

and/or by U.S. Mail this 12th day of August, 2002:

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/s/ Michael B. Twomey
Attorney

Exhibit No. 7

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power & Light Company.)	Docket No. 020262-EI
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)	
)	
In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power & Light Company.)	Docket No. 020263-EI
)	
)	
	)	Served: August 12, 2002

**FACT'S OBJECTIONS TO FLORIDA POWER & LIGHT
COMPANY'S FIRST SET OF INTERROGATORIES**

The Florida Action Coalition Team ("FACT") hereby submits the following objections to Florida Power & Light Company's ("FPL") First Set of Interrogatories.

I. Preliminary Nature of These Objections

The objections stated herein are preliminary in nature and are made at this time consistent with procedural Order PSC-02-0992-PCO-EI of the Florida Public Service Commission ("Commission"), which requires a respondent to raise objections or requests for clarification within ten days of receipt of discovery requests. Should additional grounds for objection be discovered as FACT develops its response, FACT reserves the right to supplement or modify its objections up to the time it serves its responses. Should FACT determine that a protective order is necessary regarding any of the requested information, FACT reserves the right to file a motion with the Commission seeking such an order at the time its response is due.

II. General Objections

These consolidated dockets involve the question whether the Commission should approve FPL's petitions for "need determinations" for new generation at its Martin and Manatee plant sites. As the petitioner in these need determination proceedings, FPL alone carries the affirmative burden of demonstrating that its proposed projects will satisfy the statutory need criteria set forth in Section 403.519, Florida Statutes.

FACT is an intervenor in these consolidated dockets. FACT will not support a witness in these consolidated dockets. FACT, consequently, has no affirmative burden to meet in these proceedings. Nonetheless, FPL has now served extensive and unduly burdensome discovery requests on FACT including these 13 interrogatories. FPL's extensive discovery requests are nothing more than a thinly-veiled effort to harass and punish FACT for intervening in these proceedings. FPL is clearly attempting to deflect the focus of these need determinations from the requisite review of FPL's projects to a wholly irrelevant review of FACT. FACT objects to all such discovery requests as irrelevant, immaterial, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Additionally, FACT objects to each and every one of the interrogatories that calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. FACT in no way intends to waive such privileges or protections.

FACT objects to providing information that is proprietary, confidential business information without provisions in place to protect the confidentiality of the information. FACT has not had sufficient time to make a final determination of whether the discovery requests call for the disclosure of confidential information. However, if it determines that any of the discovery requests would require the disclosure of confidential information, FACT will either file a motion for protective order requesting confidential classification and procedures for protection or take other actions to protect the confidential information requested. FACT in no way intends to waive claims of confidentiality.

FACT objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission and available to FPL through normal procedures.

FACT incorporates by reference all of the foregoing general objections into each of its specific objections set forth below as though stated therein.

III. Specific Objections

Interrogatories Nos. 3-12.

FACT objects to each of these interrogatories on the grounds that they each seek information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. In addition, FACT objects to these interrogatories because they are an attempt to punish and otherwise harass FACT for intervening in these proceedings.

Lastly, FACT objects to these interrogatories to the extent they request information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, or any other applicable privilege or protection afforded by law.

Respectfully submitted this 12th day of August, 2002.

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CERTIFICATE OF SERVICE

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/s/ Michael B. Twomey
Attorney

Exhibit No. 8

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power & Light Company.)	Docket No. 020262-EI
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In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power & Light Company.)	Docket No. 020263-EI
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)	
<hr/>)	Served: August 19, 2002

**FACT'S OBJECTIONS TO FLORIDA POWER & LIGHT COMPANY'S
AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM**

The Florida Action Coalition Team ("FACT") hereby submits the following objections to Florida Power & Light Company's ("FPL") Amended Notice of Taking Deposition Ducus Tecum, served August 8, 2002.

I. Preliminary Nature of These Objections

The objections stated herein are preliminary in nature and are made at this time consistent with procedural Order PSC-02-0992-PCO-EI of the Florida Public Service Commission ("Commission"), which requires a respondent to raise objections or requests for clarification within ten days of receipt of discovery requests. Should additional grounds for objection be discovered as FACT develops its response, FACT reserves the right to supplement or modify its objections up to and through the course of any deposition taken pursuant to this Notice. FACT has determined that a protective order is necessary to protect against unauthorized discovery, and FACT will file a motion for protective order with the Commission seeking such an order prior to the close of business Friday, August 23, 2002.

II. General Objections

These consolidated dockets involve the question whether the Commission should approve FPL's petitions for "need determinations" for new generation at its Martin and Manatee plant sites. As the petitioner in these need determination proceedings, FPL alone carries the affirmative burden of demonstrating that its proposed projects will satisfy the statutory need criteria set forth in Section 403.519, Florida Statutes.

FACT is an approved intervenor in these consolidated dockets. FACT will not support a witness in these consolidated dockets. FACT, consequently, has no affirmative burden to meet in these proceedings. Nonetheless, FPL has now served an Amended Notice of Taking Deposition Duces Tecum on FACT seeking to depose its Executive Director, Ernie Bach, and requiring him to bring to the deposition "documents concerning the organization, officers, and membership of the Florida Action Coalition Team ("FACT") and copies of documents concerning the decision by FACT members or representatives to intervene in FPL's Determination of Need proceeding."

Given FACT's assertion that it will file no testimony in these proceedings, FPL's discovery request, as represented by this notice of deposition, is nothing more than a thinly-veiled effort to harass and punish FACT for intervening in these proceedings. FPL is clearly attempting to deflect the focus of these need determinations from the requisite review of FPL's projects to a wholly irrelevant review of FACT. FACT's membership, organization, officers and the constitution of its membership, as well as its decision to seek party status in these dockets, have no relation or relevance to the Commission's statutory duty to determine, among other things, whether FPL's proposed plant additions are the "least-cost," as required by Section 403.519, Florida Statutes. FACT objects to this deposition because FPL's goal is clearly to discover information that is

irrelevant, immaterial, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

III. Specific Objection

As stated previously, FACT will file its motion for protective order by the close of business Friday, August 23, 2002 setting forth its more specific legal objections to the deposition on the grounds that the deposition clearly seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Respectfully submitted this 19th day of August, 2002.

/s/ Michael B. Twomey
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been transmitted electronically

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/s/ Michael B. Twomey
Attorney

Exhibit No. 9

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition To Determine Need For
an Electrical Power Plant in Martin County
by Florida Power & Light Company.**

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Docket No. 020262-EI

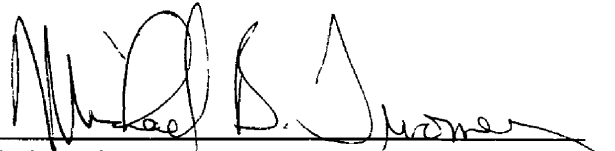
**In re: Petition To Determine Need For
an Electrical Power Plant in Manatee County
by Florida Power & Light Company.**

Docket No. 020263-EI

Served: August 21, 2002

**FACT'S NOTICE OF SERVING RESPONSES TO FLORIDA
POWER & LIGHT COMPANY'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND FIRST SET OF INTERROGATORIES**

The Florida Action Coalition Team ("FACT") hereby gives notice of serving its responses to Florida Power & Light Company's First Request for Production of Documents and Florida Power & Light Company's (FPL's) First Set of Interrogatories to Elizabeth C. Daley, counsel for Florida Power & Light Company, with copies to parties of record, on August 21, 2002. Affidavit of Ernie Bach as sponsor of Attachments A-C to the responses will be supplied separately and at a later date.



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Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power & Light Company.)	Docket No. 020262-EI
)	
)	
)	
In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power & Light Company.	)	Docket No. 020263-EI
)	
)	
	)	Served: August 21, 2002

**FACT'S RESPONSES TO FLORIDA POWER &
LIGHT COMPANY'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND FIRST SET OF INTERROGATORIES**

Pursuant to Rule 28-106.106, F.A.C., and Rules 1.340 and 1.350, Fla.R.Civ.P., Florida Action Coalition Team ("FACT") responds as follows to Florida Power & Light Company's (FPL's) First Request for Production of Documents and Florida Power & Light Company's First Set of Interrogatories.

INTRODUCTION

FACT incorporates its prior Objections, served August 12, 2002. FACT's responses included herein are without waiver of those prior Objections. FACT will reiterate that the focus of these proceedings is whether FPL has met its burden of proof, pursuant to Section 403.519, Florida Statutes, to demonstrate to the Commission that there is a "need" for the new capacity it seeks to construct at its Martin and Manatee plant sites. FACT has not filed the testimony of any witness it will offer in these proceedings, nor will it attempt to later. The legitimate issues in these dockets are confined to whether FPL has selected the most cost-effective generating alternatives available to it and whether it has met the other requirements imposed by Section 403.519, Florida Statutes. None

of the discovery demanded of FACT by FPL's First Set of Interrogatories and its First Request for Production of Documents has any relevance to the question whether FPL has carried its statutory burden imposed by Section 403.510, Florida Statutes, nor is the discovery requested reasonably calculated to lead to evidence admissible in these proceedings on the issue of the "need" for the new generation sought for approval.

Response to Request for Production (No. 1)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT is providing the documents contained in Attachment A.

Response to Request for Production (No. 2)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT is providing the names of several more of its members who are also customers of FPL in Attachment B.

Response to Request for Production (No. 3)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT is providing the names of several more

of its members who are also customers of FPL in Attachment B.

Response to Request for Production (No. 4)

None.

Response to Request for Production (No. 5)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Response to Request for Production (No. 6)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT will state the previously disclosed fact that Ernie Bach is the Executive Director of FACT.

Response to Request for Production (No. 7)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Response to Request for Production (No. 8)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information

not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Response to Request for Production (No. 9)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Response to Request for Production (No. 10)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Response to Request for Production (No. 11)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding and, further, that the information sought is protected by the attorney-client privilege.

Response to Request for Production (No. 12)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT is providing the documents contained

in Attachment C.

Response to Request for Production (No. 13)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Response to Request for Production (No. 14)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Response to Request for Production (No. 15)

See previous objection raised to this POD as set forth in FACT's Objections to First Request for Production of Documents. FACT objects to this POD on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT states the following with respect to FPL's demand:

Please provide copies of all correspondence or other communications between

(a) FACT and any other party in FPL's Determination of Need proceedings -

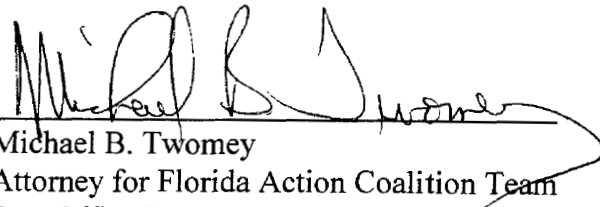
Answer: There are none.

and;

(b) FACT and the Florida Public Service Commission in connection with FPL's Determination of Need proceedings -

Answer: All communications between FACT and the Florida Public Service Commission in connection with FPL's Determination of Need proceedings are a matter of public record, and, as best FACT can determine, all are contained within the Commission's official files for these dockets.

Respectfully submitted this 21st day of August, 2002.

A handwritten signature in black ink, appearing to read "Michael B. Twomey", written over a horizontal line. The signature is stylized and cursive.

Michael B. Twomey
Attorney for Florida Action Coalition Team
Post Office Box 5256
Tallahassee, Florida 32314-5256
Phone: 850-421-9530
FAX: 850-421-8543
miketwomey@talstar.com

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing has been transmitted electronically
and/or by U.S. Mail this 21th day of August, 2002:

Martha Carter Brown, Esq.
Lawrence Harris, Esq.
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Mbrown@psc.state.fl.us

R. Wade Litchfield, Esq.
Jay Molyneaux, Esq
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420

Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman, Esq.
Timothy J. Perry, Esq.
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, & Arnold, P.A.
117 South Gadsden Street
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Jmcglothlin@mac-law.com

Charles A. Guyton, Esq.
Steel, Hector & Davis, LLP
215 South Monroe Street
Suite 601
Tallahassee, FL 32301

Jon C. Moyle, Jr., Esq.
Cathy M. Sellers, Esq.
Moyle Flanigan Katz Raymond &
Sheehan, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
Jmoylejr@moylelaw.com

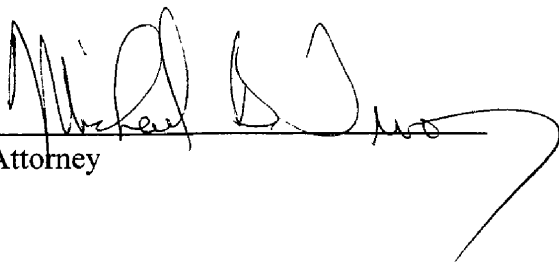
R.L. Wolfinger
South Pond Energy Park, LLC
c/o Constellation Power Source
111 Market Place, Suite 500
Baltimore, Maryland 21202-7110

D. Bruce May, Jr., Esq.
Karen D. Walker, Esq.
Holland & Knight LLP
315 S. Calhoun Street, Suite 600
Tallahassee, Florida 32301
Dbmay@hklaw.com

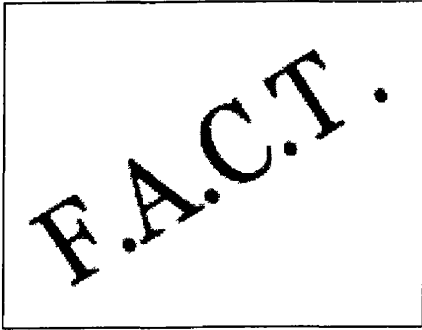
Mr. William G. Walker, III
Vice President
Florida Power & Light Company
215 S. Monroe Street, Suite 810
Tallahassee, FL 32301-1859

John W. McWhirter
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, & Arnold, P.A.
400 North Tampa Street, Suite 3350
Tampa, Florida 33602

John T. Butler, Esq.
Steel Hector & Davis, LLP
200 S. Biscayne Blvd., Suite 4000
Miami, FL 33131-2398



Attorney



**FLORIDA ACTION COALITION TEAM
PO Box 100**

LARGO, FL 33779-0100

About the Florida Action Coalition Team

F.A.C.T. is a statewide alliance with an affiliation of over 60 consumer, environmental and taxpayer associations throughout Florida and is active as a regional affiliate or co-ordinator for over a dozen additional nationally prominent organizations.

The **Florida Action Coalition Team (FACT)** is a truly non-partisan grassroots organization with thousands of advocates active in taxpayer, consumer, healthcare and environmental issues, with an alliance whose members stretch from the Florida Keys up to the Panhandle. With offices in Largo and Tallahassee, FACT involves itself in the important current political issues affecting Florida's citizens. FACT researches and prepares the information and strategizes the campaign on these issues and then sets in motion the contact, education and active participation of the thousands of good citizens who normally abstain from activity in civic or political affairs.

Our Mission Statement

The **Florida Action Coalition Team (FACT)** is an empowerment tool which permits grassroots organizations and citizens to become educated and organized in order to address public policy, with an express priority for activating areas from which citizens' voices are seldom heard or heeded.

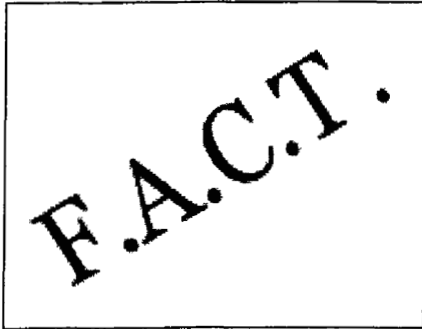
FACT was founded in 1992 from a handful of disgruntled citizens residing in Pinellas County, Florida who formed an opposition group to some local tax issues, an increase in a local utility rate and the general malaise of the country with secretive and overpowering government without true representation. This group won its local battles and through the organizational skills of its founder, continued to grow and became the vehicle which permits citizens to have a voice, indeed to have a part in the decision-making process on those critical issues affecting them. A genuine value and strength of **FACT** lies in the real diversity of its members and organizations, drawn from all age groups including an abundance of significant senior groups with immeasurable experience and knowledge, all of this enhanced by those members of all ethnic, racial and religious communities. Added to this mix is the knowledge and experience gained by our association with a number of other outstanding national and statewide organizations in the fields of consumerism, taxation, healthcare, and the environment, which creates in **FACT** a strong and viable ally, fully capable of waging the battles necessary to provide ultimate victory.

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ATTACHMENT A PAGE 1



FLORIDA ACTION COALITION TEAM

PO Box 100

LARGO, FL 33779-0100

A short list of some FACT's affiliations

- ◆ Floridians Against Government Waste (state)
- ◆ Council for Citizens Against Government Waste (national)
- ◆ Consumer Federation of America (national)
- ◆ Florida Silver Haired Legislature (state)
- ◆ Florida Senior Task Force (state)
- ◆ Electric Consumers Alliance (national)
- ◆ Sovereignty Tax Proposal Association (national)
- ◆ National Consumers League (national)
- ◆ The Consumer Alliance (national)
- ◆ United Citizens of Pinellas County (local)
- ◆ Condo Owners of Pinellas County (local)
- ◆ Taxpayers For Common Sense (national)
- ◆ Sovereign Order of St. John (international)
- ◆ Pinellas Community Television (local)
- ◆ Coalition For Lower Gas Prices (state)
- ◆ Forestbrook Homeowners Association (local)
- ◆ People Over Politics (state)
- ◆ PlanetFeedback.com (national)
- ◆ Floridians For Fair Elections (state)

These are but a short list of the many affiliations and associate groups within the scope of FACT's demography, which includes homeowners associations, local political action groups, senior citizen groups, environmental groups and individual citizens from throughout the state.

"THIS" is the Florida Action Coalition Team

Ernest Wm. Bach
Executive Director - 2002

Tele: (727) 585-1111

Fax: (727) 585-1111

ernie@gte.net

ATTACHMENT A

MAY 0 2002

ERNEST WM. BACH
700 STARKEY ROAD # 365
LARGO, FL 33771-2334

(727) 585-1111
(727) 581-0009
ERNIEB@GTE.NET

Current Activities:

- ◆ **Executive Director:** Florida Action Coalition Team (F.A.C.T.)
- ◆ **Vice-President / Director:** Forestbrook V Homeowners Association
- ◆ **President:** Condominium Owners of Pinellas County (COPICO)
- ◆ **Ad Hoc Member:** Florida House of Representatives Senior Caucus Committee
- ◆ **President:** Floridians Against Government Waste
- ◆ **Vice-President:** Ballot Access Reform Committee
- ◆ **Executive Producer / Host:** "Your Common Cause" television program
- ◆ **Advisory Board Member:** United Citizens of Pinellas County
- ◆ **President:** Florida Senior Task Force

National Affiliations:

- ◆ **Knight Commander:** Sovereign Order of St. John; Knights Hospitallers of Jerusalem
- ◆ **Florida Regional Co-ordinator:** Citizens Against Government Waste
- ◆ **Florida Regional Co-ordinator:** Americans for Competitive Telecommunications
- ◆ **Florida Regional Co-ordinator:** Sovereignty Tax Proposal Association
- ◆ **Florida Regional Co-ordinator:** Taxpayers For Common Sense
- ◆ **Florida Regional Co-ordinator:** Electric Consumers Alliance
- ◆ **Florida Regional Co-ordinator:** Consumers First
- ◆ **Florida Regional Co-ordinator:** The Consumers Alliance
- ◆ **Florida Regional Associate:** Consumer Federation of America
- ◆ **Florida Regional Associate:** National Consumers League
- **National Advisory Board Member:** PlanetFeedback.com

Additional Recent Activities:

- ◆ **Past Senate President & CEO:** Florida Silver Haired Legislature
- ◆ **Florida Board of Governors-Pinellas County Chairman:** Florida Common Cause
- ◆ **Executive Committee-Charter member:** People Over Politics (Fair Redistricting)
- ◆ **Chairman:** Pinellas County Anti-Orimulsion Task Force
- ◆ **Executive Director:** Coalition For Lower Gas Prices
- ◆ **Board Member:** Florida Attorney Generals Lemon Law Review Commission
- ◆ **Board Member:** State of Florida Department of Management Services IIP Review Board
- ◆ **Arbitrator / Board Member:** University of Wisconsin Dispute Settlement Board
- ◆ **President:** Pinellas Community Television
- ◆ **Associate Member:** Suncoast League of Municipalities
- ◆ **National Advisory Board Member:** Americans For Tax Reform CODG Project
- ◆ **West Central Florida Co-ordinator:** Committee To Insure Florida's Environment
- ◆ **Member / Events Co-ordinator:** AARP Consumer Protection Program
- ◆ **Board Member:** Floridians For Fair Elections
- ◆ **Producer / Host:** Television Program - "Through The Looking Glass"
Radio Programs - "Teen Scene Magazine" & "Take Back Your Government"
- ◆ **President:** Largo Homeowners Association

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ATTACHMENT A
PAGE 2 OF 4

Elected Office:

- ◆ **Largo City Commissioner:** 1987-1990
- ◆ **District Chairman, Pinellas County Political Party Executive Committee:** 2 years
- ◆ **Delegate to state Presidential Conventions:** 1988
- ◆ **Largo Homeowners Association: President** 1990-1993
- ◆ **Condo Owners of Pinellas County (COPICO): President** 2001-02
- ◆ **Senate President & CEO:** Florida Silver Haired Legislature 1999-2000

Additional Offices:

- ◆ **National Conference of Mayors & Elected Officials**
- ◆ **National League of Cities:** Energy, Environment & Natural Resources Committee, 3 years
- ◆ **Suncoast League of Municipalities:** Board of Directors 3 years, Public Relations Chairman
- ◆ **Florida League of Cities:** Urban Administration Committee 2 years, STOP Mandates Committee/Pinellas County Chairman - Pinellas County Chairman, Home Rule Committee 3 years

Additional Election Activities:

- ◆ **Founder and Florida Campaign Co-ordinator:** Perot Florida Presidential Campaign 1992
- ◆ **Candidate for Florida House of Representative:** 1998 and 2000

Additional Political Activities:

- ◆ **Pinellas County Political Party Executive Committee:** Executive Board, Precinct Captain, candidate for County Chairman 1988, Steering Committee (2 presidential and 1 gubernatorial race)
- ◆ **Peninsula Political Party Club:** President 3 years

Appointments:

- ◆ **Pinellas County Charitable Solicitation Board:** 3 years, Vice-Chairman 2 years
- ◆ **Pinellas County Social Action Funding Committee:** 4 years, Chairman 2 years
- ◆ **Pinellas County Metropolitan Planning Organization Citizen Advisory Comm:** 2 years
- ◆ **Pinellas County Parks Board:** 1 year
- ◆ **Pinellas County Campus Police Department:** Sworn Reserve Officer 3 years
- ◆ **City of Largo Finance Advisory Board:** 3 years
- ◆ **Largo Police Department Citizen Action Committee:** Founding charter member, 4 years

Community Activities:

- ◆ **Rotary Clubs:** Board of Directors 3 years, Community Services Chairman 2 years, Special Projects Chairman 2 years, Public Relations Chairman 1 year, Originator and Chairman of Special Kids Xmas Party 2 years and Holiday Food For the Needy Program 3 years, 5 years perfect attendance
- ◆ **Family Service Centers:** Board of Directors 5 years, Vice-President 1 year, Community Development Committee, Project CAN Fundraising Committee Co-Chairman 2 years
- ◆ **Pinellas Youth Symphony:** Board of Directors 3 years, Vice Pres. Resource Development 2 years
- ◆ **Chamber of Commerce:** Government Committee 2 years, Building Fund Committee
- ◆ **League of Women Voters:** National Resources Committee

Additional Misc.: People Against Legalized Lotteries, Co-founder and activist: Save East Bay Golf Course, Executive Committee: HBO National Comic Relief for the Homeless, Executive Comm. AID 3rd World Exchange Conf., Chairman and Co-ordinator: Pinellas Children's Fingerprint Program, Founder/Chairman: March of Dimes Jail & Bail, Chairman: Hospice, Independent Fundraiser: Largo Mr. Ugly Fundraiser Contest, only came in second: Largo Elem. School Walkathon Champion

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Fax: (727) 585-1111

ernie@gte.net

ATTACHMENT A
PAGE 4 OF 4

The following FACT members have either been previously disclosed in FACT's Amended Petition to Intervene or are newly added in the response to FPL's POD Number 3.

Rhoda and Robert Franklin
4970 Sable Palm Blvd.
Tamarac, FL 33319

Walter Feinman
1550 NW 80 Ave.
Margate, FL 33063

Jan Cooper
4302 Martinique Circle
Coconut Creek, FL 33066

Rita Warren
20120 NE 2 Ave.
No. Miami Beach, FL 33179

Burton Greenfield
1545 Sea Grape Way
Hollywood, FL 33019

Erika Lowenthal
156 NW 80 Ave.
Margate, FL 33063

Gloria M. Harper
4755 Aston Gardens Way
Naples, FL 34109

Margaret Kearns
18565 Phlox Drive
Ft. Myers, FL 33912

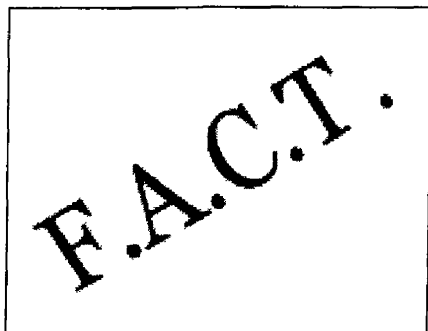
Eleanor Lowe
5120 Cobble Creek Court #4
Naples, FL 34110

William Berman
1711 Bent Tree Circle

Ft. Myers, FL 33907

Marilyn Pape
27273 Buccaneer Drive
Bonita Springs, FL 34135

Frank and Loralie Strand
170 Dowling Avenue
Port Charlotte, FL 33952



FLORIDA ACTION COALITION TEAM
PO BOX 100
LARGO, FL 33779-0100

About the Florida Action Coalition Team

This ACTION timeline, for your perusal, lists just some of the activities that our organization has been part of during the past decade.

- 1994-95 One of three statewide consumer / telephone subscriber groups in opposition to the 1995 Florida Telephone Deregulation Bill. Floridians lost this battle.
- 1996 One of two consumer / ratepayer groups to oppose the FPC two year rate increase proposal to pay for the shutdown of the Crystal River nuclear plant. We took this fight to the PSC and won as FPC retracted it's rate increase proposal.
- 1997 One of two statewide consumer / telephone subscriber groups to oppose a move by Rep. Joe Arnall to pass legislation doubling local basic service rates. We won this one in the legislature.
- 1998 One of two local groups to oppose legislation to county government by the St. Pete Junior College to impose a \$35 million tax increase on local property taxes. We won this one in the county commission.
- 1996-00 One of four statewide consumer / ratepayer groups who fought against the use of Orimulsion fuel in its power plants by FP&L. We won this one with the Florida Cabinet.
- 1999-01 The only statewide consumer group to battle DuPont and Pharma to rescind the Florida Negative Formulary list and permit additional generic drugs into the Florida marketplace. We won this one in the legislature and the Governor.

Our organization is well established, locally and statewide, as a viable and productive group that has no problem taking on the dwarfs of corporate America as listed above. If you would like additional war stories, please let us know.

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ernie@gte.net

ATTACHMENT C

Florida Action Coalition Team
Docket Nos. 020262-EI & 020263-EI
Florida Power & Light Company's First
Set of Interrogatories
Interrogatory No. 1
Page 1 of 1

Q. Please identify all fact witnesses you anticipate calling in this proceeding, and for each witness provide a description of the facts and conclusions to which each witness will testify

A. None.

Florida Action Coalition Team
Docket Nos. 020262-EI & 020263-EI
Florida Power & Light Company's First
Set of Interrogatories
Interrogatory No. 2
Page 1 of 1

Q. Please identify all expert witnesses you expect to call at the hearing in this matter, and for each expert witness provide the witness's qualifications, a detailed summary of the witness's expected testimony, and a listing (name, docket number, jurisdiction, date) of all prior proceedings in which the witness has testified.

A. None.

Florida Action Coalition Team
Docket Nos. 020262-EI & 020263-EI
Florida Power & Light Company's First
Set of Interrogatories
Interrogatory No. 3
Page 1 of 1

- Q. Please describe FACT's development, including the year in which same was organized, the state or country in which FACT was organized, and the names of the founders of the organization.**
- A.** See previous objection raised to this Interrogatory as set forth in FACT's Objections to First Set of Interrogatories. FACT objects to this Interrogatory on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT states the following: FACT was founded by its Executive Director, Ernie Bach in the State of Florida in 1992.

Q. Please list the exact current membership of FACT.

A. See previous objection raised to this Interrogatory as set forth in FACT's Objections to First Set of Interrogatories. FACT objects to this Interrogatory on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT states the following:

The following FACT members have either been previously disclosed in FACT's Amended Petition to Intervene or are newly added in the response to FPL's POD Number 3.

Rhoda and Robert Franklin
4970 Sable Palm Blvd.
Tamarac, FL 33319

Walter Feinman
1550 NW 80 Ave.
Margate, FL 33063

Jan Cooper
4302 Martinique Circle
Coconut Creek, FL 33066

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No. Miami Beach, FL 33179

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Hollywood, FL 33019

Erika Lowenthal
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Margate, FL 33063

Gloria M. Harper
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Naples, FL 34109

Margaret Kearns
18565 Phlox Drive
Ft. Myers, FL 33912

Eleanor Lowe
5120 Cobble Creek Court #4
Naples, FL 34110

William Berman
1711 Bent Tree Circle
Ft. Myers, FL 33907

Marilyn Pape
27273 Buccaneer Drive
Bonita Springs, FL 34135

Frank and Loralie Strand
170 Dowling Avenue
Port Charlotte, FL 33952

Q. Please list the name and address of each FACT member who is a retail residential customer of FPL.

- A. See previous objection raised to this Interrogatory as set forth in FACT's Objections to First Set of Interrogatories. FACT objects to this Interrogatory on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT states the following:

The following FACT members have either been previously disclosed in FACT's Amended Petition to Intervene or are newly added in the response to FPL's POD Number 3.

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Port Charlotte, FL 33952

Florida Action Coalition Team
Docket Nos. 020262-EI & 020263-EI
Florida Power & Light Company's First
Set of Interrogatories
Interrogatory No. 6
Page 1 of 1

Q. Please list the name and address of each FACT member who is currently a party in FPL's Determination of Need proceedings.

A. Order PSC-02-0934-PCO-EI Granting Amended Petition to Intervene to FACT in Dockets 020262 and 020263, issued July 11, 2002, approved FACT as a party and not any of its members. There are no FACT members who are currently a party in these proceedings.

- Q. Please list the name and address of each FACT officer and explain how the officers are selected.**
- A.** See previous objection raised to this Interrogatory as set forth in FACT's Objections to First Set of Interrogatories. FACT objects to this Interrogatory on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT states the following: Ernie Bach is the Executive Director of the Florida Action Coalition Team.

- Q. Please describe FACT's financial condition, including a detailed description of each source of funding for FACT, including (a) general funding and (b) funding for FACT's intervention in FPL's Determination of Need proceedings.**
- A. See previous objection raised to this Interrogatory as set forth in FACT's Objections to First Set of Interrogatories. FACT objects to this Interrogatory on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Florida Action Coalition Team
Docket Nos. 020262-EI & 020263-EI
Florida Power & Light Company's First
Set of Interrogatories
Interrogatory No. 9
Page 1 of 1

- Q. Please list the approximate percentage of FACT's budget that is derived from each of the funding sources listed in Interrogatory No. 8.**
- A. See previous objection raised to this Interrogatory as set forth in FACT's Objections to First Set of Interrogatories. FACT objects to this Interrogatory on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Florida Action Coalition Team
Docket Nos. 020262-EI & 020263-EI
Florida Power & Light Company's First
Set of Interrogatories
Interrogatory No. 10
Page 1 of 1

- Q. Please explain how and when FACT engaged the services of Michael B. Twomey, including the basis for his compensation and the person or persons responsible for compensating him.**
- A. See previous objection raised to this Interrogatory as set forth in FACT's Objections to First Set of Interrogatories. FACT objects to this Interrogatory on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Furthermore, FACT objects to this Interrogatory on the basis that the information sought is protected by the attorney-client privilege.

Q. Please discuss in detail the history of FACT's involvement in Florida Public Service Commission proceedings and other types of regulatory proceedings.

A. See previous objection raised to this Interrogatory as set forth in FACT's Objections to First Set of Interrogatories. FACT objects to this Interrogatory on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding. Without waiving the preceding objections, FACT states the following with respect to prior involvement in PSC proceedings and other types of regulatory proceedings:

- | | |
|---------|---|
| 1994-95 | FACT was one of three statewide consumer/telephone subscriber groups in opposition to the 1995 Florida Telephone Deregulation Bill. |
| 1996 | FACT was one of two consumer/ratepayer groups to oppose FPC's two year rate increase proposal to pay for the shutdown of the Crystal River nuclear plant. |
| 1997 | FACT was one of two statewide consumer/telephone subscriber groups to oppose a move by Rep. Joe Arnall to pass legislation doubling local basis service. |
| 1998 | FACT was one of two local groups to oppose legislation at county government by the St. Pete Junior College to impose a \$35 million tax increase on local property taxes. |
| 1996-00 | FACT was one of four statewide consumer/ratepayer groups who fought against the use of Orimulsion fuel in its power plants by FPL. |
| 1999-01 | FACT was the only statewide consumer group to battle DuPont and Pharma to rescind the Florida Negative Formulary list and permit additional generic drugs into the Florida marketplace. |

Florida Action Coalition Team
Docket Nos. 020262-EI & 020263-EI
Florida Power & Light Company's First
Set of Interrogatories
Interrogatory No. 12
Page 1 of 1

- Q.** Please describe any vote in which the FACT membership has approved FACT's intervention in FPL's Determination of Need proceeding.
- A.** See previous objection raised to this Interrogatory as set forth in FACT's Objections to First Set of Interrogatories. FACT objects to this Interrogatory on the grounds that it seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

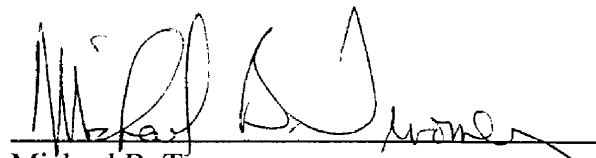
Q. Please describe in detail each and every way in which FACT believes that FPL has failed to demonstrate that the proposed Manatee and Martin units are the most cost-effective means of meeting its capacity needs.

A. While FACT identified as an "ultimate fact" in its Amended Petition to Intervene that:

FPL has failed to demonstrate that the proposed Manatee and Martin units are the most cost-effective means of meeting its capacity needs

FACT made that identification as a statement of the reality that FPL has not yet proved its case that the proposed units are the most cost-effective means of meeting its capacity needs. FACT has not, to date, received and had an opportunity to review the confidential materials being provided by FPL. Furthermore, FACT is still reviewing the non-confidential testimony and exhibits filed by FPL, as well as the just received prefiled testimony of other intervenors. While FACT cannot currently detail any FPL failure to meet its statutory burden, it reserves the right to take a position on this issue at the appropriate time in these proceedings and after it has sufficiently reviewed all the testimony, exhibits and discovery addressing the issue.

Respectfully submitted this 21st day of August, 2002.



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I HEREBY CERTIFY that a copy of the foregoing has been transmitted electronically and/or by

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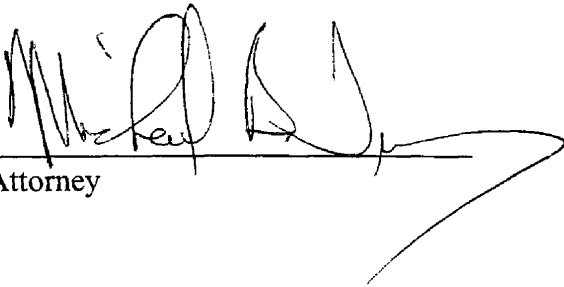
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Exhibit No. 10

002432

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need)
for Proposed Electrical Power Plant in)
Martin County of Florida Power and)
Light Company)
_____)

DOCKET NO. 020262-EI

In re: Petition for Determination of Need)
For Proposed Electrical Power Plant in)
Manatee County of Florida Power and)
Light Company)
_____)

DOCKET NO. 020263-EI

Filed: August 21, 2002

**FLORIDA POWER & LIGHT COMPANY'S MOTION TO COMPEL
THE FLORIDA ACTION COALITION TEAM TO RESPOND
TO FLORIDA POWER & LIGHT COMPANY'S
FIRST SET OF INTERROGATORIES (NOS. 1-13) AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-15)**

Florida Power & Light Company ("FPL"), pursuant to Rules 28-106.206 and 28-106.303, Florida Administrative Code, hereby moves to compel the Florida Action Coalition Team ("FACT") to respond to FPL's First Set of Interrogatories (Nos. 1-13) and First Request for Production of Documents (Nos. 1-15), a copy of which is attached hereto as Exhibit 1 (the "Discovery"). The grounds for this motion are as follows:

1. On August 1, 2002, FPL served its Discovery on FACT in order to increase its knowledge about FACT's intervention in the present docket concerning FPL's Petitions for Determination of Need for Proposed Electric Power Plant.
2. Unfortunately, FACT has responded with nothing more than blanket objections to every request in the FPL Discovery. See FACT's Objections to Florida Power & Light Company's First Set of Interrogatories and FACT's Objections to Florida

Power & Light Company's First Request for Production of Documents, which are attached hereto as Exhibit 2 (the "FACT Objections").

3. FACT objects generally that the FPL Discovery is "not relevant to this proceeding" and further labels FPL Discovery as "an attempt to punish and otherwise harass FACT for intervening in these proceedings." FACT Objections at III.

4. However, FPL's Discovery is relevant because FPL cannot effectively determine whether FACT can actually "prove up" its allegations of standing to intervene without identification of FACT's full membership and its exact reasons for intervention in this proceeding. FPL has reason to believe that FACT represents the economic interests of certain independent power producers instead of, or in addition to, the interests of individual customers.

5. Time is running out for discovery in this proceeding. FPL needs the discovery requested from FACT for its trial preparations and to contest FACT's standing to intervene. FPL cannot and does not waste time on frivolous harassment of FACT or any other parties. FPL's only purpose in this proceeding is to demonstrate under Florida law that the Commission should grant FPL's Petitions for Determination of Need. Thus, FPL is entitled to reasonable discovery from FACT and every other intervenor in order to seek proof of allegations of standing and to decide how to respond to potential challenges to FPL's Petitions for Determination of Need.

6. FACT's conduct regarding discovery requires FPL to move to compel. In addition to refusing to respond to legitimate written discovery, FACT has frustrated FPL's attempt to depose FACT's executive director, Ernie Bach, by untimely raising new objections to the deposition and by delaying the filing of a threatened motion for a

protective order, most likely in order to avoid a ruling prior to the scheduled deposition.

FPL has scheduled and then rescheduled a date for the deposition in order to accommodate FACT and its executive director.

7. The immediate purpose of the FPL Discovery is to learn as soon as possible (i) who are the members of FACT and whether FACT has standing as it has pled; (ii) FACT's positions on the issues in this case, (iii) FACT's witnesses, if any, and (iv) the materials FACT intends to rely upon in support of those positions. Receiving responses to basic questions in discovery from FACT and other intervenors is essential to FPL's ability to participate effectively in this proceeding.

8. FPL contests FACT's standing to intervene in this proceeding. Notwithstanding the Prehearing Officer's finding that FACT has "adequately alleged that the substantial interests of a substantial number of its members may be affected by the Commission's decision in these dockets," Order No. PSC-02-0934-PCO-EI (emphasis added), FACT still must "prove up" its allegations of standing in order to retain party status as an intervenor. See Edgewater Beach Owners Ass'n, Inc. v. Bd of County Commissioners of Walton Co., 1995 WL 1052993 (DOAH Case No. 95-0437DRI), *on remand from Edgewater Beach Owners Ass'n, Inc. v. Bd of County Commissioners of Walton Co.*, 645 So. 2d 541, 543 (Fla. 1st DCA 1994). In Edgewater Beach, an administrative law judge found, on remand from the First District Court of Appeal, that a petitioner lacked standing to appeal a development order because "the greater weight of the evidence" showed the petitioner had failed to present facts necessary to "prove up" the petitioner's allegations of standing that the appellate court initially found to be sufficient. Edgewater Beach (DOAH case), *supra*. See also Ocala/Silver Springs Hilton

v. Ocala Park Centre Maintenance Assoc., 1997 WL 1052617 (DOAH Case No. 96-3848, April 24, 1997)(Petitioner to intervene was required to prove up its allegations of standing in the course of a formal administrative hearing.)

9. FPL seeks to learn whether FACT is acting to protect the interests of individual customers or to protect the economic interests of one or more independent power producers. FPL needs to receive discovery to gain further understanding of FACT's proof of standing, if any, in order to contest FACT's standing as an intervenor. FPL also needs to more fully understand FACT's position and the basis for its position in light of FACT's decision not to offer testimony. Consequently, FPL's motion to compel should be granted.

WHEREFORE, undersigned counsel respectfully requests that this Commission compel FACT to respond to FPL's First Set of Interrogatories (Nos. 1-13) and First Request for Production of Documents (Nos. 1-15).

Respectfully submitted,

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By _____
Charles A. Guyton
Elizabeth C. Daley

002436

CERTIFICATE OF SERVICE
Docket Nos. 020262-EI and 020263-EI

I HEREBY CERTIFY, that on this 21st day of August, 2002, a copy of Florida Power & Light Company's Motion To Compel FACT To Respond To Florida Power & Light Company's First Set Of Interrogatories (Nos. 1-13) And First Request For Production Of Documents (Nos. 1-15) to FACT was served electronically (*) and by U.S. Mail to the following:

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Telephone: (850) 222-2525 Facsimile: (850) 222-5606 Ernie Bach, Executive
Director* Florida Action Coalition Team P.O. Box 100 Largo, Florida 33779-0100
ernieb@gte.net

By: _____
Elizabeth C. Daley

002437

Exhibit No. 11

002438

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need) DOCKET NO. 020262-EI
for Proposed Electrical Power Plant in)
Martin County of Florida Power and)
Light Company)
_____)

In re: Petition for Determination of Need) DOCKET NO. 020263-EI
For Proposed Electrical Power Plant in)
Manatee County of Florida Power and)
Light Company)
_____)
Filed: August 21, 2002

**FLORIDA POWER & LIGHT COMPANY'S
MOTION TO COMPEL INTERVENOR'S DEPOSITION**

Florida Power & Light Company ("FPL"), pursuant to Rules 28-106.206 and 28-106.303, Florida Administrative Code, hereby moves to compel the deposition of Ernie Bach, representative of the Florida Action Coalition Team ("FACT"), an intervenor in this proceeding, and in support thereof states:

1. FPL seeks to take Mr. Bach's deposition as to FACT's intervention and positions in the present docket concerning FPL's Petitions for Determination of Need for Proposed Electric Power Plant.
2. On August 5, 2002, FPL issued a Notice of Deposition of Mr. Bach, who is executive director of FACT, for August 13, 2002. Upon receipt of the August 5 notice, Michael Twomey, counsel for FACT, indicated to undersigned counsel that he intended to object to FPL's Notice of Deposition of Mr. Bach.
3. On August 8, 2002, FPL issued an Amended Notice of Deposition to change the date of the deposition to August 28, 2002, in order to accommodate Mr. Bach's vacation

schedule as requested by Mr. Twomey. A copy of the Amended Notice of Deposition is attached hereto as Exhibit 1.

4. On August 8 and again on August 16, FACT's counsel indicated to undersigned counsel that he intended to object to the Amended Notice of Deposition. FACT's counsel indicated that he would serve the objection on August 19, which was ten days after service of FPL's Amended Notice of Deposition. After the close of business on August 19, 2002 (7:30 p.m.) FACT's counsel faxed objections arguing that FPL alone carries a burden of proof, that FACT will offer no witness, that FACT has no burden to meet in this case, that FPL's discovery request is an effort to harass and punish FACT for intervening and that FACT will set forth more specific objections in a motion for protective order to be filed on August 23, 2002. FACT's objections to the deposition are attached as Exhibit 2.

5. FACT's objections are untimely. They were not served within ten days, as required by Order No. PSC-02-0992-PCO-EI. A motion for protective order filed after the specified time for raising objections is not a proper means of raising objections and should not be allowed as a means of raising belated and untimely objections.

6. FPL has worked with FACT's counsel to avoid this dispute and this motion to compel. Each time FPL's counsel has spoken with FACT's counsel, FACT's counsel has stated an intent to object without stating specific grounds and has attempted to drag out FACT's time for stating specific objections. Even FACT's untimely objections fail to state specific objections and seek to drag out further the time to file objections.

7. Time for discovery is running out. FPL needs the discovery requested from FACT for its trial preparations and to contest FACT's standing. The deposition of Mr. Bach was scheduled at FACT's convenience to accommodate Mr. Bach's vacation schedule and should occur as noticed on August 28, 2002. To preserve that date and to protect against FACT's

repeated attempts to defer this matter, FPL has been forced to move to compel Mr. Bach's deposition.

8. FPL is entitled to take the deposition of Mr. Bach, or another representative of FACT, for discovery purposes in order to determine as soon as possible (i) who are the members of FACT and whether FACT has standing as it has pled; (ii) FACT's positions on the issues in this case, (iii) FACT's witnesses, if any; and (iv) the materials FACT intends to rely upon in support of its positions. Receiving responses to basic questions from FACT and other intervenors is essential to FPL's ability to participate effectively in this proceeding.

9. FPL contests FACT's standing to intervene in this proceeding. Notwithstanding the Prehearing Officer's finding that FACT has "adequately alleged that the substantial interests of a substantial number of its members may be affected by the Commission's decision in these dockets," Order No. PSC-02-0934-PCO-EI (emphasis added), FACT still must "prove up" its allegations of standing in order to retain party status as an intervenor. See Edgewater Beach Owners Ass'n, Inc. v. Bd of County Commissioners of Walton Co., 1995 WL 1052993 (DOAH Case No. 95-0437DRI), *on remand from Edgewater Beach Owners Ass'n, Inc. v. Bd of County Commissioners of Walton Co.*, 645 So. 2d 541, 543 (Fla. 1st DCA 1994). In Edgewater Beach, an administrative law judge found, on remand from the First District Court of Appeal, that a petitioner lacked standing to appeal a development order because "the greater weight of the evidence" showed the petitioner had failed to present facts necessary to "prove up" the petitioner's allegations of standing that the appellate court initially found to be sufficient. Edgewater Beach (DOAH case), *supra*. See also Ocala/Silver Springs Hilton v. Ocala Park Centre Maintenance Assoc., 1997 WL 1052617 (DOAH Case No. 96-3848, April 24, 1997)(Petitioner to intervene was required to prove up its allegations of standing in the course of a formal administrative hearing.)

10. FPL seeks to learn whether FACT is acting to protect the interests of individual customers or to protect the economic interests of one or more independent power producers. FPL needs to take Mr. Bach's deposition and receive other discovery to gain further understanding of FACT's proof of standing, if any, in order to contest FACT's standing as an intervenor. FPL also needs to more fully understand FACT's position and the basis for its position since FACT is not offering testimony. Consequently, FPL's motion to compel should be granted.

WHEREFORE undersigned counsel respectfully requests that this Commission compel Mr. Bach's attendance at a deposition as previously noticed by FPL to be held in Clearwater, Florida, at 10 a.m. on August 28, 2002.

Respectfully submitted,

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By _____
Charles A. Guyton
Elizabeth C. Daley

CERTIFICATE OF SERVICE
Docket Nos. 020262-EI and 020263-EI

I HEREBY CERTIFY, that on this 21st day of August, 2002, a copy of Florida Power & Light Company's Motion To Compel the Deposition of Ernie Bach was served electronically (*) and by U.S. Mail to the following:

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Exhibit No. 12

002444

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BY FACSIMILE AND U.S. MAIL

August 23, 2002

Elizabeth Daley, Esquire
Charles Guyton, Esquire
Steel Hector & Davis LLP
215 South Monroe Street
Suite 601
Tallahassee, Florida 32301

Re: FACT's Motion for Protective Order

Dear Betsy and Charlie:

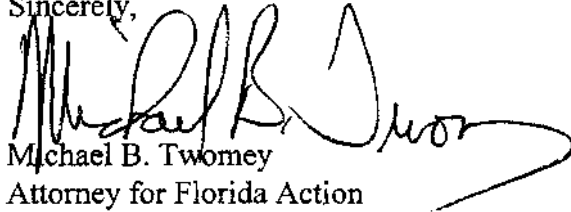
As reluctant as I am do have to do this, especially given FPL's expressed suggestion that FACT is intentionally delaying the discovery in these dockets, I have to inform you that I am unable to meet my self-imposed deadline of providing you with FACT's motion for protective order by the close of business today. I apologize that I cannot meet my goal of having the motion completed, filed and served today, but as a sole practitioner without research assistance, I simply have not been able to complete and incorporate in my motion all of the research I consider essential to address the multiplicity of issues raised by FPL's discovery demands. Given FPL is clearly trying to remove FACT from this case as the only representative of residential consumers, I want to try to make the motions as thorough as possible. My revised goal now, which I am highly confident that I can meet, is to have the completed motion ready to file by about noon, Monday, August 26, 2002.

With respect to the now noticed deposition of Ernie Bach for Wednesday, August 28, 2002, it is my view that FACT's filing of its motion for protective order Monday will act as an automatic stay on the deposition being taken until such time as final Commission resolution of the motion is had. Accordingly, so that you do not unnecessarily expend any time and effort on the Bach deposition, I want to advise you it is FACT's intention to not make Mr. Bach available until such time as there is either a Commission order compelling his attendance or until we mutually agree to the same.

As I understand the applicable rules, FACT has until the end of the day Wednesday, August 28, 2002, to file and serve its responses to FPL's two motions to compel, which were filed and served on Wednesday, August 21, 2002. Given FACT's opportunity to timely respond to your motions, it appears unlikely, if not impossible, that you will be able to obtain an order compelling the Bach deposition that morning.

Lastly, given FPL's assertion that FACT's objections to your discovery request were untimely as a result of being faxed to your firm a couple hours after the verbally agreed upon hour of 5 p.m., we may have to collectively, or individually, reexamine the merits of that agreement, as opposed to merely abiding by the clearly more liberal provisions of Commissioner Deason's order controlling procedure in these dockets.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael B. Twomey", with a long, sweeping horizontal stroke extending to the right.

Michael B. Twomey
Attorney for Florida Action
Coalition Team

cc: Parties of Record
Ernie Bach

Exhibit No. 13

002447

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM HOWARD SOLOMON,)	
Petitioner,)	
vs.	)	Case No. 00-2089
FLORIDA COMMUNITIES TRUST,)	
Respondent,)	
and)	
CITY OF JACKSONVILLE,)	
Intervenor.)	

ORDER GRANTING INTERVENTION

This cause came on for consideration of a Motion to Intervene filed by the City of Jacksonville on June 23, 2000. The parties have not filed a response in opposition to the motion. Accordingly, it is

ORDERED that the Motion to Intervene is granted subject to proof of standing during the final hearing.

EX

13

002448

DONE AND ORDERED this 13th day of July, 2000, in
Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of July, 2000.

COPIES FURNISHED:

Howard Solomon
1625 Emerson Street
Jacksonville, Florida 32207

Geoffrey T. Kirk, Esquire
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Karl J. Sanders, Esquire
City of Jacksonville
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

Exhibit No. 14

002450

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM HOWARD SOLOMON,

Petitioner,

and

MANDARIN COMMUNITY CLUB,

Intervenor,

vs.

Case No. 00-2089

FLORIDA COMMUNITIES TRUST,

Respondent,

and

CITY OF JACKSONVILLE,

Intervenor.

ORDER

This cause came on for consideration of Mandarin Community Club's Motion to Intervene and Request for Preliminary Hearing on "Standing" on July 21, 2000. Respondent Florida Communities Trust filed a response in opposition to the motion on July 24, 2000. After review of the file, it is

ORDERED:

1. The motion to intervene is granted subject to proof of standing during the final hearing.

2. The Request for Preliminary Hearing on "Standing" is denied.

EX 14

002451

DONE AND ORDERED this 31st day of July, 2000, in
Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of July, 2000.

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Jacksonville, Florida 32207

Geoffrey T. Kirk, Esquire
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Karl J. Sanders, Esquire
City of Jacksonville
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

Exhibit No. 15

002453

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM HOWARD SOLOMON,)
)
 Petitioner,)
)
 and)
)
 MANDARIN COMMUNITY CLUB,)
)
 Intervenor,)
)
 vs.) Case No. 00-2089
)
)
 FLORIDA COMMUNITIES TRUST)
)
 Respondent,)
)
 and)
)
 CITY OF JACKSONVILLE,)
)
 Intervenor.)
 _____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on August 28 through 29, 2000, in Jacksonville, Florida, before the Division of Administrative Hearings by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner William Howard Solomon:

William Howard Solomon, Esquire
1625 Emerson Street
Jacksonville, Florida 32207

002454

For Intervenor Mandarin Community Club:

William Howard Solomon, Esquire
1625 Emerson Street
Jacksonville, Florida 32207

For Respondent Florida Communities Trust:

Geoffrey T. Kirk, Esquire
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

For Intervenor City of Jacksonville:

Karl J. Sanders, Esquire
City of Jacksonville
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

STATEMENT OF THE ISSUES

The issues are whether Petitioner William Howard Solomon and Intervenor Mandarin Community Club have standing to challenge Respondent Florida Communities Trust's decision to approve an amendment to the management plan for a historical park, owned and operated by the Intervenor City of Jacksonville, and if so, whether Respondent Florida Communities Trust properly exercised its discretion to approve that decision.

PRELIMINARY STATEMENT

On January 26, 2000, the Governing Board of the Florida Communities Trust (Respondent, hereafter referred to as "FCT") held a public meeting to consider the City of Jacksonville's (Intervenor, hereafter referred to as "the City") proposed amendment to its management plan for the Walter Jones Historical

Park (hereafter referred to "the Park"). At that meeting, FCT voted unanimously to approve the City's request. The vote constituted final agency action and was subsequently published in the Florida Administrative Weekly on March 10, 2000.

On March 30, 2000, William Howard Solomon (Petitioner, hereafter referred to as "Mr. Solomon") filed a Petition for Administrative Proceedings with FCT. Said petition alleged that FCT's decision did not comply with the requirements of Section 267.061, Florida Statutes.

At its next regularly scheduled meeting on May 15, 2000, FCT voted to refer Mr. Solomon's petition to the Division of Administrative Hearings for a formal hearing pursuant to Section 120.57(1), Florida Statutes. FCT filed the petition with the Division of Administrative Hearings on May 17, 2000.

The Division of Administrative Hearings issued an Initial Order on May 22, 2000. FCT and Mr. Solomon filed unilateral responses to the Initial Order on June 2, 2000, and June 5, 2000, respectively.

On June 6, 2000, the undersigned issued a Notice of Hearing by Video Teleconference. Said notice scheduled the hearing for August 8, 2000.

On June 7, 2000, FCT filed an Answer and Affirmative Defenses. FCT's affirmative defenses included the following: (a) failure to state a cause of action; (b) estoppel; and (c)

lack of standing. Mr. Solomon filed a Reply and General Denial of Affirmative Defenses on August 16, 2000.

On June 19, 2000, Mr. Solomon filed an unopposed Motion for Continuance. An order dated June 21, 2000, granted the motion and rescheduled the hearing for August 28-29, 2000.

On June 23, 2000, the City filed a Motion to Intervene. This motion was granted by order dated July 13, 2000.

On July 21, 2000, the Mandarin Community Club (Intervenor, hereafter referred to as "MCC") filed a Motion to Intervene and Request for Preliminary Hearing on Standing. FCT filed a response in opposition to this motion on July 24, 2000. An order dated July 31, 2000, granted the MCC's Motion to Intervene subject to proof of standing during final hearing and denied the Request for Preliminary Hearing on Standing.

On August 24, 2000, FCT filed a Motion in Limine. When the hearing commenced, the undersigned heard oral arguments on this motion, reserving the right to rule on the admissibility of evidence at the time of its presentation.

During the hearing, Mr. Solomon and MCC, acting jointly, presented the testimony of the following witnesses: Barbara Mattick, Roy Hunt, Herschel E. Sheppard, William Jeter, Jr., Leslie Keys, Jerry Spinks, and Robin Robbins-Merritt. Mr. Solomon and MCC offered 24 joint exhibits that were accepted into evidence.

Exhibit No. 16

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SAVE THE MANATEE CLUB, INC.,)
)
 Petitioner,)
)
vs.) Case No. 99-3885RX
)
SOUTHWEST FLORIDA WATER)
MANAGEMENT DISTRICT,)
)
 Respondent,)
)
and)
)
SOUTH SHORES PROPERTIES PARTNERS,)
LTD.,)
)
 Intervenor.)

)

FINAL ORDER

This case was heard by David M. Maloney, Administrative Law Judge of the Division of Administrative Hearings, on October 14, 1999, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Robert Goodwin, Esquire
Save the Manatee Club, Inc.
Suite 210
500 North Maitland Avenue
Maitland, Florida 32751

Steven A. Medina, Esquire
Post Office Box 247
Fort Walton Beach, Florida 32549-0247

For Respondent: William S. Bilenky, Esquire
Karen E. West, Esquire
Southwest Florida Water
Management District
2379 Broad Street
Brooksville, Florida 34609-6899

For Intervenor: Frank E. Matthews, Esquire
Eric T. Olsen, Esquire
Post Office Box 6526
Tallahassee, Florida 32314-6526

STATEMENT OF THE ISSUES

Whether Save the Manatee Club has standing in this proceeding? Whether the exemptions in paragraphs (3), (5) and (6) of Rule 40D-4.051, Florida Administrative Code, (the Exemptions) are "invalid exercises of delegated legislative authority" as defined in paragraphs (b) and (c) of Section 120.52(8), Florida Statutes? Whether the Exemptions violate the prohibitions and restrictions on agency rulemaking contained in the last four sentences of Section 120.52(8), Florida Statutes?

PRELIMINARY STATEMENT

On September 17, 1999, Save the Manatee Club (the Club or Petitioner) filed a petition with the Division of Administrative Hearings (DOAH). Entitled "Petition for Formal Administrative Proceeding and for an Administrative Determination of the Invalidity of the Exemptions in Florida Administrative Code Rule 40D-4.051(3), (5) and (6)", the petition asks for two types of administrative hearings: the first to challenge agency action, the second to challenge provisions in rule.

The first challenge is brought under the authority of Sections 120.569 and 120.57, Florida Statutes. The Club hopes to convince the Southwest Florida Water Management District (SWFWMD or the District) to deny South Shores Property Partners, Ltd., (South Shores or the Developer) the benefit of exemptions from

permit requirements and ultimately a conceptual permit. South Shores seeks the benefit of the Exemptions in order to conduct activities the Club postulates will harm the manatee and its habitat near and in Tampa Bay.

Through the second challenge, the Club, under the authority of Section 120.56(3), Florida Statutes, seeks an administrative determination of the invalidity of existing rules, namely paragraphs (3), (5) and (6) of Rule 40D-4.051, Florida Administrative Code, (the Rule). These paragraphs provide exemptions the District has decided to afford the Developer. This proceeding concerns only the latter challenge: the challenge to the rule provisions.

A second copy of the Petition was filed contemporaneously with the District. The District, in turn, referred the petition to DOAH where it has been assigned Case no. 99-4155 (currently pending before the undersigned.) As a result of the filing and the referral, Case no. 99-4155 concerns only the challenge to the decisions of the District that the Exemptions apply to South Shores and that South Shores should, therefore, receive a conceptual permit.

On September 23, 1999, the undersigned was designated as the administrative law judge to conduct the proceedings in this case. On the next day, September 24, a notice of hearing was issued setting the final hearing for October 14, 1999. (Within the next

few weeks, the undersigned was also designated as the administrative law judge to conduct the proceedings in Case no. 99-4155. That case has been set for final hearing in Brooksville, commencing December 16, 1999.)

In the meantime, South Shores petitioned to intervene in this case. The District filed a motion in limine and South Shores filed a motion to strike. One of the aims of the two motions was to exclude from this proceeding any consideration of the challenge to the agency action taken by the District, and evidence relating thereto.

Following a status conference, South Shores' petition was granted subject to proof of standing to intervene at hearing. By the time of the status conference, all were aware that the single petition filed by the Club had initiated two proceedings, one at DOAH, the other through the District's referral to DOAH. The parties agreed at the conference that the two cases (albeit initiated by the same petition) should not be consolidated. The agreement rendered unnecessary any need for a ruling on South Shores motion to strike and the District's motion in limine; there is no dispute that this proceeding concerns only the challenge to the Rule's Exemptions pursuant to Section 120.56(3), Florida Statute.

On October 11, 1999, Petitioner filed a motion to amend its petition. The motion sought to amend the allegations relating to the Club's standing and to delete subparagraph (j) of paragraph

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PUNTA GORDA HMA, INC., licensee
for Charlotte Regional Medical
Center,

Petitioner,

vs.

Case No. 98-1134

AGENCY FOR HEALTH CARE
ADMINISTRATION and BON SECOURS-
VENICE HEALTH CARE CORPORATION,

Respondents.

SARASOTA COUNTY PUBLIC HOSPITAL
BOARD, d/b/a SARASOTA MEMORIAL
HOSPITAL,

Petitioner,

vs.

Case No. 98-1142

AGENCY FOR HEALTH CARE
ADMINISTRATION and BON SECOURS-
VENICE HEALTH CARE CORPORATION,

Respondents.

SARASOTA DOCTORS HOSPITAL, INC.,
d/b/a COLUMBIA DOCTOR'S HOSPITAL
OF SARASOTA,

Petitioner,

vs.

Case No. 98-1145

AGENCY FOR HEALTH CARE
ADMINISTRATION and BON SECOURS-
VENICE HEALTH CARE CORPORATION,

Respondents,
and

Naples COMMUNITY HOSPITAL, INC.,

Intervenor.

BON SECOURS-VENICE HEALTH CARE CORPORATION,)	
)	
Petitioner,)	
)	
vs.	)	Case No. 98-1497
)	
AGENCY FOR HEALTH CARE ADMINISTRATION,)	
)	
Respondent.)	
)	
<hr/>		
PUNTA GORDA HMA, INC., licensee for Charlotte Regional Medical Center,)	
)	
Petitioner,)	
)	
vs.	)	Case No. 98-3420RX
)	
AGENCY FOR HEALTH CARE ADMINISTRATION,)	
)	
Respondent.)	
)	
<hr/>		

RECOMMENDED ORDER

These consolidated cases were heard by David M. Maloney, Administrative Law Judge of the Division of Administrative Hearings, from February 23, 1999 through March 16, 1999, with a final day of hearing on March 18, 1999, in Tallahassee, Florida. A separate Final Order has been issued in Case No. 98-3420RX.

APPEARANCES

For Punta Gorda HMA, Inc., licensee for Charlotte Regional Medical Center:

James C. Hauser, Esquire
Skelding, Labasky, Corry, Hauser,
Jolly & Metz, P.A.
Post Office Box 669
Tallahassee, Florida 32302-0669

For Sarasota County Public Hospital Board, d/b/a Sarasota Memorial Hospital:

Robert A. Weiss, Esquire
Karen A. Putnal, Esquire
Parker, Hudson, Rainer & Dobbs, LLP
The Perkins House, Suite 200
118 North Gadsden Street
Tallahassee, Florida 32301

For Sarasota Doctors Hospital, Inc., d/b/a Columbia Doctor's Hospital of Sarasota:

John D.C. Newton, II, Esquire
Berger, Davis & Singerman, P.A.
215 South Monroe Street, Suite 705
Tallahassee, Florida 32301

For Agency for Health Care Administration:

Richard A. Patterson, Esquire
Agency for Health Care Administration
Post Office Box 14229
Tallahassee, Florida 32317-4229

For Bon Secours-Venice Health Care Corporation:

Frank P. Ranier, Esquire
Gerald B. Sternstein, Esquire
Sternstein, Rainer & Clarke, P.A.
314 North Calhoun Street
Tallahassee, Florida 32301-7606

For Naples Community Hospital, Inc.:

W. David Watkins, Esquire
Deborah LaCombe, Esquire
Watkins, Tomasello & Caleen, P.A.
Post Office Box 15828
Tallahassee, Florida 32317-5828

STATEMENT OF THE ISSUE

Whether either, both, or neither of the applications by Sarasota Doctors Hospital, Inc., and Bon Secours-Venice Health Care Corporation for an open heart surgery program in District 8 should be approved?

PRELIMINARY STATEMENT

On March 5, 1998, the Division of Administrative Hearings received a notice from the Agency for Health Care Administration ("AHCA" or the "Agency"). The notice advised that a request for formal hearing had been filed with AHCA by Punta Gorda HMA, Inc., the licensee for Charlotte Regional Medical Center ("CRMC"). The request was in the form of a petition entitled "Petition for Formal Administrative Hearing" filed by CRMC. The petition challenged AHCA's preliminary approval of CON 8914 to Bon Secours-Venice Hospital ("Venice") to establish an adult open heart surgery program. The petition was assigned Case No. 98-1134 by the Division of Administrative Hearings.

Sarasota County Public Hospital Board, d/b/a Sarasota Memorial Hospital ("Sarasota Memorial") and Sarasota Doctors Hospital, Inc., d/b/a Columbia Doctor's Hospital of Sarasota ("Doctors") also filed petitions for formal administrative proceeding with the Agency. Just as the petition of CRMC, Sarasota Memorial's petition contested the preliminary approval of Venice's application. It also supported the denial of an application filed by Doctors in the same batching cycle for a new adult open heart surgery program in District 8. Like the two other petitions, Doctors contested the preliminary approval of Venices' application. Unlike the Sarasota Memorial petition, Doctors contested the preliminary denial of its own application.

The two petitions were referred to DOAH by AHCA at the same time as CRMC's petition. Sarasota Memorial's petition was assigned Case No. 98-1142; Sarasota Doctors was assigned Case No. 98-1145.

On March 20, 1997, DOAH received a notice from AHCA of another petition, this one filed by Venice. Entitled "Approved Applicant's Petition Challenging Other Specified Co-Batched Applications," the petition requested a hearing, consolidation with Case Nos. 98-1134, 98-1142, and 98-1145, and the ultimate relief that Venice's application be finally approved together with final denial of the petitions of Sarasota Doctors.

Case Nos. 98-1134, 98-1142, and 98-1145 were consolidated pursuant to a notice of related petitions. Case No. 98-1497 was also consolidated with the three other consolidated cases, and the undersigned was designated as the administrative law judge to conduct the proceedings on the consolidated cases.

On July 27, 1998, CRMC filed a petition with the Division of Administrative Hearings a petition seeking a determination that a portion of Rule 59C-1.033, Florida Administrative Code, is invalid. The case (the "Rule Challenge") was assigned Case No. 98-3420RX and consolidated with the other four proceedings pursuant to an order ruling on a motion to consolidate by CRMC.

In the interim, Naples Community Hospital ("Naples") filed a petition to intervene in consolidated Case Nos. 98-1134, 98-1142, and 98-1145. The petition requested that Doctors' application

for CON 8913 be finally denied. Intervention was granted subject to proof of standing at final hearing. Naples did not seek to intervene in the Rule Challenge and continues to take no position on the challenge with the filing of its proposed recommended order. Its purpose in intervening in this proceeding is to oppose the application of Doctors. It does not oppose the application of Venice.

Final hearing spanned four weeks; the hearing commenced February 23, 1999 and ended March 18, 1999. Doctors proceeded first. It presented the testimony of William C. Lievense, an expert in hospital administration; Nora Lissy; Shirley A. Spicer, an expert in risk management and quality management; Robert Irwin Goodman, an expert in health insurance including managed care plans; Gail Arlene Harrison, an expert in nursing administration and hospital administration; and Ronald T. Luke, an expert in the fields of health planning, health policy, and health economics. Doctors offered exhibits into evidence marked for identification as Doctors' Exhibit Nos. 1 through 9, 11A-11K, 12, 13, 14A-14K, 15-20, 22-38, 40-42, 44-52, 56-60, 64-67, 69, and Rebuttal 1 and 2. Of these, all were admitted into evidence in their entirety with the exception of Doctors' Exhibit Nos. 34, 35, and 47 which were rejected and Doctors' Exhibit No. 38 which was admitted in part.

Venice proceeded next. It called as witnesses Sister Mary Catherine Rodgers; Gary Hrbek, expert in hospital administration;

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MEL and PAMELA MCGINNIS,)
)
 Petitioners,)
)
vs.)
)
)
DEPARTMENT OF ENVIRONMENTAL)
PROTECTION,)
)
 Respondent,)
)
and)
)
MANASOTA-88, INC.,)
)
 Intervenor.)

Case No. 97-1894

RECOMMENDED ORDER

Pursuant to notice, this case was heard by the Division of Administrative Hearings, through its designated Administrative Law Judge, David M. Maloney, on January 13 and 14, 1998, in Tampa, Florida.

APPEARANCES

For Petitioners: Frank E. Matthews, Esquire
 Kimberly A. Grippa, Esquire
 Hopping, Green, Sams & Smith, P.A.
 Post Office Box 6526
 Tallahassee, Florida 32314-6526

For Respondent: Douglas MacLaughlin, Esquire
 T. Andrew Zodrow, Esquire
 Mail Station 35
 3900 Commonwealth Boulevard
 Tallahassee, Florida 32399-3000

For Intervenor: Thomas W. Reese, Esquire
 2951 61st Avenue South
 St. Petersburg, Florida 33712

STATEMENT OF THE ISSUES

Whether the Mosquito Ditch Exemption of Section 373.4211(25), Florida Statutes, applies so as to exclude Petitioners' property adjacent to Miguel Bay in Manatee County from the permitting authority of the Department of Environmental Protection? If not, whether Petitioners are entitled to an Environmental Resources Permit from the Department?

PRELIMINARY STATEMENT

On April 18, 1997, The Division of Administrative Hearings received from the Department of Environmental Protection (DEP or Department) a document entitled, "Request for Assignment of Administrative Law Judge and Notice of Preservation of Record." Attached to the request was a Petition for Formal Administrative Hearing filed by Mel and Pamela McGinnis with the Department.

In the petition, the McGinnises contested the preliminary denial by the Department of their application in Permit File No. 412783533. The petition related that they had "initially requested an exemption from the requirement to obtain an Environmental Resource Permit (ERP). . . [and] [a]s an alternative, and as required by DEP, . . . submitted an ERP permit application." Petition, p. 2. After alleging disputed issues of fact and citing law requiring reversal of the Department's proposed action, the petition demanded all appropriate relief including the specific relief that either the

activities the McGinnises proposed be found exempt from permitting by DEP or that the permit requested be granted.

The Department's request, in turn, asked that the Division of Administrative Hearings designate an administrative law judge to conduct all proceedings required by law. The request was honored; the matter was assigned Case No. 97-1894 and the undersigned was designated to conduct the proceedings.

The matter was noticed for hearing in Tampa for two days in September. In the meantime, Manasota-88, Inc., moved for leave to intervene. The motion was granted "subject to proof of standing at hearing." Following an unopposed motion by Manasota-88 for a continuance, the case was re-set for hearing for January 13 and 14, 1998.

At final hearing, Petitioners presented the testimony of three witnesses: Pamela McGinnis; Larry Rhodes, an expert in mosquito control; and John Benson, an expert in civil engineering. Petitioners' Exhibits 1(A) through 1(O), 2(A) through 2(C), 3(A) through 3(G), and 6 were admitted into evidence. Objection to the introduction of Petitioners' Exhibit 5, a report to the Governor from the Chief Inspector General for the state, was sustained and the exhibit was rejected. The exhibit was proffered by Petitioners.

Petitioners' Exhibit 4, a Special Master's Report following a proceeding conducted under the Florida Land Use and Environmental Dispute Resolution Act, Section 70.51(19), Florida

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CONSOLIDATED-TOMOKA LAND)
COMPANY; INDIGO DEVELOPMENT)
GROUP, INC.; INDIGO GROUP,)
INC.; INDIGO GROUP, LTD.;)
PATRICIA LAGONI; SEAVIEW)
DEVELOPMENT CORPORATION;)
LEROY E. FOLSOM; JAMES S.)
and JOAN W. WHITESIDE;)
SUSAN SPEAR ROOT; SUSAN R.)
GRAHAM; CHAPMAN J. ROOT, II;)
DANIEL P. S. PAUL; and)
AVA AND RUFUS, INC.,)

Petitioners,)

vs.)

Case No. 97-0870RP

ST. JOHNS RIVER WATER)
MANAGEMENT DISTRICT,)

Respondent.)

SAMUEL P. BELL, III and)
ANN MOORMAN-REEVES,)

Petitioners,)

vs.)

Case No. 97-0871RP

ST. JOHNS RIVER WATER)
MANAGEMENT DISTRICT,)

Respondent.)

FINAL ORDER

Pursuant to notice, a formal hearing was held in these cases on April 1, 2 and 9, 1997, in Tallahassee, Florida, before Donald R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: Frank E. Matthews, Esquire
97-0870RP T. Kent Wetherall, II, Esquire
Post Office Box 6526
Tallahassee, Florida 32314-6526

For Petitioners: Kevin X. Crowley, Esquire
97-0871RP Carol A. Forthman, Esquire
131 North Gadsden Street
Tallahassee, Florida 32301-1507

For Respondent: William H. Congdon, Esquire
Nancy B. Barnard, Esquire
Post Office Box 1429
Palatka, Florida 32178-1429

STATEMENT OF THE ISSUE

The issue in these cases is whether proposed amendments to Rules 40C-4.041, 40C-4.051, 40C-4.091, 40C-41.011, 40C-41.023, 40C-41.033, 40C-41.043, 40C-41.051, and 40C-41.063, and the related revisions to the Applicant's Handbook: Management and Storage of Surface Waters are an invalid exercise of delegated legislative authority as alleged by petitioners.

PRELIMINARY STATEMENT

Case No. 97-0870RP began on February 21, 1997, when petitioners, Consolidated-Tomoka Land Company and other similarly situated landowners, filed a petition for administrative determination of the invalidity of various revisions in Chapters 40C-4 and 40C-41, Florida Administrative Code, being proposed for adoption by respondent, St. Johns River Water Management District. The rules generally establish the Tomoka River and Spruce Creek Hydrological Basins in Volusia County, Florida, and

create more stringent standards for development within those basins. Case No. 97-0871RP, which involves an almost identical claim, was initiated on February 24, 1997, by petitioners, Samuel P. Bell, III and Ann Moorman-Reeves, who also own property in the affected area.

After being reviewed for legal sufficiency, the two cases were assigned to the undersigned on February 27, 1997. By notice of hearing dated February 28, 1997, the cases were consolidated for hearing purposes and scheduled for final hearing on March 18 and 19, 1997, in Tallahassee, Florida. By agreement of the parties, the cases were continued to April 1, 2 and 9, 1997, at the same location.

On March 20, 1997, the Association of Florida Community Developers filed a motion to intervene in these proceedings. After a standing objection was lodged by respondent, the undersigned conditionally allowed the prospective intervenor to participate in this proceeding and reserved ruling on the standing issue subject to proof of standing at final hearing.

At final hearing, petitioners in Case No. 97-0870RP presented the testimony of Dr. Harvey H. Harper, III, a professional engineer and accepted as an expert in the areas of stormwater management, water quality and chemistry, hydrology, water management permitting, and water resources engineering; Dr. Jay H. Exum, accepted as an expert in the area of environmental permitting; J. Steven Godley, a biologist and accepted as an

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

SUMTER CITIZENS AGAINST
IRRESPONSIBLE DEVELOPMENT;
T. DANIEL FARNSWORTH;
RUSSELL WEIR; JACK BURCHILL;
LINDA LATHAM; and TERRY
FORSMAN,

Petitioners,
vs.

DCA 98-051-FOF-GM
DOAH Case No. 96-5917GM

DEPARTMENT OF COMMUNITY
AFFAIRS and SUMTER COUNTY,

Respondents,

and

PRINGLE COMMUNITIES, INC.,

Intervenor.

_____ /

FINAL ORDER

An Administrative Law Judge with the Division of Administrative Hearings entered a Recommended Order in these proceedings on February 26, 1998. A copy of the Recommended Order is attached hereto as Exhibit A. On March 13, 1998, Petitioners filed Exceptions to the Recommended Order. No Responses to the Exceptions were filed.

Background

This is a proceeding to determine whether amendments to the Sumter County Comprehensive Plan are "in compliance" with the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes ("the Act").

This matter began on September 24, 1996, when Respondent, Sumter County (County), adopted Plan Amendment 96-2 by Ordinance No. 96-17, which changed 510 acres from a Future Land Use Map

(FLUM) designation of Agricultural to Planned Unit Development. The County transmitted the adopted amendment to the Department of Community Affairs (Department), which noticed its intent to find the amendment "in compliance" on November 1, 1996.

On November 25, 1996, Sumter Citizens Against Irresponsible Development (Citizens), T.D. Farnsworth, Russell Weir, Jack Burhill, Linda Latham and Terry Forsman filed a joint petition that sought an administrative hearing challenging the Department's "in compliance" determination. On December 12, 1996, the Department referred the petition to the Division of Administrative Hearings for a formal, administrative hearing. On May 19, 1997, the Administrative Law Judge assigned by the Division granted Pringle Communities, Inc. (Pringle) permission to intervene in support of finding the amendments "in compliance" subject to proof of standing at final hearing.

The Administrative Law Judge conducted a final hearing on November 13 and 14, 1997, in Bushnell, Florida. After the transcript of the hearing and the parties' proposed recommended orders were filed, the Administrative Law Judge issued a Recommended Order, and forwarded it to the Department for disposition. He recommended that the plan amendments be found "in compliance" with the Act.

The Recommended Order erroneously provided that the parties had the right to file written exceptions with the Department within fifteen (15) days. Section 163.3184(9)(b), Florida Statutes (1997), provides that exceptions are required to be filed within ten (10) days of rendition of the Recommended Order. However, given that the Notice of Rights in the Recommended Order provided that fifteen days would be allowed, the exceptions are considered timely. Heartland Environmental Council Inc. v. Department of Community Affairs and Highlands County, 96 E.R.F.A.L.R. 185 (Dept. of Community Affairs, Nov. 25, 1996).

Standard of Review

Section 120.57(1)(j), Florida Statutes, (1997), provides the standard by which the Department is required to review the Recommended Order and Exceptions. It provides in relevant part:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law and

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA POWER CORPORATION,)
)
 Petitioner,)
)
vs.) Case No. 96-5344
)
DEPARTMENT OF ENVIRONMENTAL)
PROTECTION,)
)
 Respondent,)
)
and)
)
LEGAL ENVIRONMENTAL)
ASSISTANCE FOUNDATION, INC.,)
and SIERRA CLUB, INC.,)
)
 Intervenors.)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on June 2 and 3, 1997, in Tallahassee, Florida, before Donald R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: James S. Alves, Esquire
Douglas S. Roberts, Esquire
W. Steve Sykes, Esquire
Post Office Box 6526
Tallahassee, Florida 32314-6526

For Respondent: W. Douglas Beason, Esquire
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

For Intervenor: Gail Kamaras, Esquire
(LEAF) Debra A. Swim, Esquire
1115 North Gadsden Street
Tallahassee, Florida 32303-6327

For Intervenor: Jaime Austrich, Esquire
(Sierra Club) Post Office Box 1029
Lake City, Florida 32056-1029

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner should be issued an air construction permit authorizing its Crystal River steam generating plant Units 1 and 2 to co-fire a five to seven percent blend of petroleum coke with coal.

PRELIMINARY STATEMENT

This matter began on June 25, 1996, when Respondent, Department of Environmental Protection, issued its Intent to Deny "a permit for the proposed project to burn a blend of petroleum coke and coal in the existing coal-fired Units 1 and 2 at the Crystal River Power Plant." On October 4, 1996, Petitioner, Florida Power Corporation, filed a Petition for Formal Administrative Hearing with Respondent for the purpose of contesting the proposed agency action.

The case was then referred by Respondent to the Division of Administrative Hearings on November 13, 1996, with a request that an Administrative Law Judge conduct a formal hearing. By notice of hearing dated December 2, 1996, a hearing was scheduled on February 3 and 4, 1997, in Tallahassee, Florida. At Petitioner's request, the hearing was continued to March 6 and 7, 1997. By

agreement of the parties, the hearing was continued to June 3 and 4, 1997.

On May 27, 1997, Petitions to Intervene were filed by Legal Environmental Assistance Foundation, Inc. and Sierra Club, Inc. After an objection was lodged by Petitioner, the undersigned conditionally allowed the prospective intervenors to participate in this proceeding subject to proof of standing at final hearing.

At final hearing, Petitioner presented the testimony of J. Michael Kennedy, manager of air programs in the Environmental Services Department and accepted as an expert in air quality permitting and compliance; Danny Douglas, plant manager for Crystal River Units 1 and 2 and accepted as an expert in power plant operations and management; Robert Kunkel, manager of systems performance engineering with ABB Combustion Engineering and accepted as an expert in power plant boiler design and engineering; and Kennard F. Kosdy, a principal in the environmental consulting firm Golder Associates, Inc. and accepted as an expert in air quality engineering and administration of air quality control requirements. Also, it offered petitioner's exhibits 1-47 and 49-67. All exhibits were received in evidence. Respondent presented the testimony of Al Linaro, administrator/technical supervisor of the new source review program and accepted as an expert in air quality engineering with an emphasis on the Prevention of Significant Deterioration program. Also, it offered respondent's exhibits 1-

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OCALA/SILVER SPRINGS HILTON,)
a/k/a MJ OCALA HOTEL)
ASSOCIATES LIMITED,)
)
Petitioner,)
)
vs.) CASE NO. 96-3848
)
OCALA PARK CENTRE MAINTENANCE)
ASSOCIATION, INC., a/k/a OCALA)
PARK CENTRE MAIN., INC., and)
ST. JOHNS RIVER WATER MANAGEMENT)
DISTRICT,)
)
Respondents,)
and)
)
LA QUINTA INNS, INC.,)
)
Intervenor.)
_____)

RECOMMENDED ORDER

Upon due notice, this cause came on for formal hearing on January 29 and 30, 1997 in Ocala, Florida, before Ella Jane P. Davis, a duly assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner, OCALA/SILVER SPRINGS HILTON a/k/a MJ OCALA HOTEL ASSOCIATES, LTD. (Hilton):

Lauren E. Merriam, III, Esquire
Blanchard, Merriam, Adel
and Kirkland, P.A.
4 Southeast Broadway
Post Office Box 1869
Ocala, Florida 34478

For Petitioner, OCALA PARK CENTRE MAINTENANCE ASSOCIATION, INC. a/k/a OCALA PARK CENTRE MAIN., INC. (Ocala Park or Applicant):

Thomas M. Jenks, Esquire
Pappas, Metcalf & Jenks, P.A.
200 W. Forsyth Street, Suite 1400
Jacksonville, Florida 32202

For Respondent, ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
(District):

Jennifer B. Springfield, Esquire
St. Johns Water Management District
Post Office Box 1429
Palatka, Florida 32178-1429

For Intervenor, LA QUINTA INNS, INC. (La Quinta):

Charles R. Forman, Esquire
Forman, Krehl & Montgomery
320 N.W. 3rd Avenue
Ocala, Florida 34474

and

Robert J. Karow, Esquire
Post Office Box 140094
Gainesville, Florida 32614-0094

STATEMENT OF THE ISSUE

- (1) Do Hilton, Ocala Park and La Quinta have standing (substantial interest) in these proceedings?
- (2) Has Ocala Park demonstrated reasonable assurance of compliance with the District's requirements for issuance of the remedial/retrofit stormwater management system permit?
- (3) Did Hilton institute these proceedings for an improper purpose, and if so, may attorney's fees and costs be determined and/or awarded?

PRELIMINARY STATEMENT

On June 18, 1996, Ocala Park Centre Main., Inc. submitted an application to the District for a stormwater management permit authorizing the remediation of the existing "master retention pond" serving a commercial subdivision known as Parke Centre. Upon request from District staff, the Applicant submitted

additional information on July 8, 1996. On July 24, 1996, the District issued a permit authorizing the remediation.

Ocala/Silver Springs Hilton timely filed a petition to contest the District's issuance of the permit.

The matter was referred to the Division of Administrative Hearings on August 16, 1996.

Petitioner Ocala/Silver Springs Hilton filed a motion to amend the petition to the name of the actual landowner, MJ Ocala Hotel Associates, Ltd., which motion was ultimately granted.

Ocala Park Centre Main., Inc. filed pleadings and other documents using the name, "Ocala Park Centre Maintenance Association, Inc." without filing a motion to amend the permit application or prior pleadings.

Ocala Park Maintenance Association, Inc. filed a motion to dismiss the petition herein based upon its claim that Hilton's petition had been filed in the name of a non-existent party. Hilton responded with a motion to dismiss the permit application itself, based upon Hilton's assertion that the Applicant's legal name was originally improperly stated in the permit application. On November 8, 1996, an Order was entered denying both motions to dismiss without prejudice, but requiring Hilton and the Association to each prove-up their respective standing at formal hearing.

La Quinta Inns, Inc. petitioned to intervene. La Quinta was granted intervention status by an Order dated November 25, 1996, but likewise was required to prove-up its standing in the course of formal hearing.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDGEWATER BEACH OWNERS)
ASSOCIATION, INC.,)
)
Petitioner,)
)
vs.) CASE NO. 95-0437DRI
)
BOARD OF COUNTY COMMISSIONERS)
OF WALTON COUNTY and KPM,)
LTD.,)
)
Respondents,)
and)
)
DEPARTMENT OF COMMUNITY)
AFFAIRS,)
)
Intervenor.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the above matter was heard before the Division of Administrative Hearings by its assigned Hearing Officer, Donald R. Alexander, on April 13 and May 26, 1995, in DeFuniak Springs, Florida.

APPEARANCES

For Petitioner: Richard H. Powell, Esquire
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For Respondent: George Ralph Miller, Esquire
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DeFuniak Springs, Florida 32433-0687

For Respondent: Martha Harrell Chumbler, Esquire
(KPM) Nancy G. Linnan, Esquire
Post Office Drawer 190
Tallahassee, Florida 32302-0190

For Intervenor: David L. Jordon, Esquire
Kenneth D. Goldberg, Esquire
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Tallahassee, Florida 32399-2100

STATEMENT OF THE ISSUE

The issue in this case is whether Walton County had authority to adopt resolution 93-2, which extends the termination date of the Edgewater Beach Condominium development order.

PRELIMINARY STATEMENT

This matter began on January 27, 1993, when petitioner, Edgewater Beach Owners Association, Inc., filed a petition under Section 380.07(2), Florida Statutes, with the Florida Land and Water Adjudicatory Commission (FLWAC) challenging the adoption of resolution 93-2 by respondent, Walton County. The resolution constitutes an amended development order reviving an expired development of regional impact order. An amended petition was thereafter filed by petitioner on April 1, 1993. On April 13, 1993, FLWAC dismissed the amended petition for lack of standing.

After petitioner appealed the order of dismissal, the order was reversed and remanded by the court in the case of Edgewater Beach Owners Association, Inc. v. Board of County Commissioners of Walton County, Florida et al, 645 So.2d 541 (Fla. 1st DCA 1994). In its opinion, the court concluded that the amended petition contained sufficient factual allegations to show that petitioner was "an owner of . . . affected property" within the meaning of the law, and thus it had standing to bring this action. In accord with the court's mandate, on January 31, 1995, FLWAC forwarded this matter to the Division of Administrative Hearings with a request that a hearing officer be assigned to conduct a hearing.

By notice of hearing dated February 15, 1995, a final hearing was scheduled on April 13, 1995, in DeFuniak Springs, Florida. A continued hearing was held at the same location on May 26, 1995. Prior to the first hearing, intervenor, Department of Community Affairs, filed a petition to intervene which was granted by order dated March 21, 1995.

At final hearing, petitioner presented the testimony of James J. Mallett, a professional engineer and accepted as an expert in stormwater design, stormwater utilities, and retention pond designs; Shirl Williams, a Walton County assistant administrative supervisor; Albert E. Paris, a real estate developer; and David J. Russ, an attorney and accepted as an expert in urban and regional planning. Also, it offered petitioner's exhibits 1-18, 20, 22-26 and 31-33. All exhibits were received in evidence. Respondent, KPM, Ltd., who is the owner of the subject property, presented the testimony of John Lewis, a professional engineer and accepted as an expert in the design of stormwater systems. Also, it offered KPM's exhibit 1 which was received in evidence. Intervenor presented the testimony of J. Thomas Beck, its chief of the bureau of local planning and accepted as an expert in regional planning. Also, it offered intervenor's exhibits 1-6. All exhibits were received in evidence. Finally, the parties stipulated into evidence joint exhibits 1-8, and the undersigned took official recognition of ten items.

The transcript of hearing (two volumes) was filed on June 7, 1995. Proposed findings of fact and conclusions of law were filed by the parties on

June 26, 1995. A ruling on each proposed finding has been made in the Appendix attached to this Recommended Order.

FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

1. In 1981, Edgewater Development Associates, Ltd. applied for a development order for the Edgewater Beach Condominium project (the project), a development of regional impact (DRI) for a 15.4 acre parcel of property located in Walton County between County Road 2378 and the Gulf of Mexico. On June 8, 1982, respondent, Walton County (County), issued resolution 82-12 (the original development order) authorizing the development of the project.

2. Although not then required by law to do so, but consistent with its policy for all DRI orders, the County included within Section 6 of the original development order the following provision regarding an expiration date:

The development order shall remain in effect for a period of ten years or until the development is complete and all certificates of occupancy are issued by Walton County, whichever occurs first, provided that upon application by the developer, the county may extend the duration of the development order.

Therefore, without an extension, the original development order was scheduled to expire on June 8, 1992.

3. The project was originally authorized to include six phases with 476 condominium units and associated recreational facilities. When completed, the 476 units were to be located within a horseshoe-shaped building, with an east and west wing connected at the top of the horseshoe by a lobby area. Phases I and II, consisting of 175 units, were completed by 1984 but phases III through VI have never been constructed. Petitioner, Edgewater Beach Condominium Association, Inc. (EBOA or petitioner), is a Florida condominium association and the owner of phases I and II.

4. On June 8, 1987, Edgewater Development Associates, Ltd. lost by foreclosure the approximately seven acres upon which the remaining four phases of the project were to be constructed. On July 10, 1987, EAB Realty of Florida, Inc. acquired title to that property. However, it never developed any of the remaining four phases. In May 1992, title to the property was transferred to respondent, KPM, Ltd. (KPM), and one of the KPM partners, Kero Investments, Inc. (Kero). KPM now owns the entire parcel.

5. In early May 1992, or approximately a month before the original development order was to expire, representatives of KPM asked the County's assistant administrator with responsibility for planning and zoning about extending that order. They were told that they merely had to ask the Commission for such an extension.

6. Relying on these instructions, KPM appeared before the County Commission on May 26, 1992, requesting that the termination date of the original development order be extended for thirty-five months. The Commission granted the request and voted to allow the extension. Shortly thereafter, however, KPM

and the County were informed by intervenor, Department of Community Affairs (DCA), that the action by the County on May 26, 1992, was ineffective because it failed to comply with all of the requirements of Section 380.06, Florida Statutes. KPM was told that in order to extend a DRI development order termination date, it must file a formal notice of proposed change with the County, and the County would then give public notice of the hearing at which the change was to be considered. Until these procedures were followed, no further development could occur once the expiration date had passed.

7. On June 5, 1992, KPM filed with the County a formal notice of proposed change requesting that the build-out date and expiration date of the original development order be extended to May 8, 1995.

8. Thereafter, the DCA informed the County and KPM that, after June 8, 1992, the right to develop the property covered by the original development order had expired. It also advised them that further development of the property would have to be preceded by further DRI review, namely, either a notice of proposed change or formal abandonment. Petitioner received the same information when it inquired about the possibility of constructing an addition to phases I and II. In light of this advice, on July 17, 1992, KPM's counsel withdrew its application for extension and stated that he understood that the withdrawal caused the original development order to expire as of June 8, 1992.

9. KPM then selected the notice of proposed change option because it felt that the DRI development order had value and that the abandonment procedure was basically the same as that required for a notice of proposed change. Had not KPM received this advice from DCA, it could have built up to 35 units per acre on the property, without any height restriction, under the local comprehensive plan then in effect.

10. On September 28, 1992, KPM submitted another notice of proposed change in which it requested that the build-out dates and the termination date for phases III through VI be extended until January 1, 1999. On December 7, 1992, KPM revised its notice of proposed change to request certain changes in the project's configuration, including replacing the condominiums in phase III with townhouses and reducing the number of units in that phase from 42 to 19.

11. The County treated the notice of proposed change as a presumptive substantial deviation to the original development order under Section 380.06(19)(e)3., Florida Statutes. In other words, the proposed changes were presumed by statute to create additional regional or state impacts so as to require further DRI review. However, that presumption could be rebutted by evidence submitted at a public hearing before the local government.

12. Kero was the record owner of the portion of the property covered by the September 1992 notice of proposed change. This included a beachfront parcel of approximately 50 feet by 400 feet on the eastern boundary of the undeveloped portion of the DRI and a parking lot. Kero was fully aware of the requested changes and authorized Albert Paris, the owner of one of the other KPM partners, to file the application.

13. On January 26, 1993, the County adopted the amended development order in issue here (resolution 93-2), which approved the extension of build-out and termination dates and the change in phase III configuration requested by KPM. In doing so, the County determined that, based on certain conditions placed in the amended development order, the amendment to the original development order was not a substantial deviation and thus it required no further DRI review. The

DCA concurred in this determination. The amended development order requires, however, that before construction of phases IV through VI may commence, KPM must submit additional information to the County for approval and for another amendment to the DRI development order pursuant to Section 380.06(19), Florida Statutes.

14. Contending that the amended development order was invalid, petitioner filed an amended petition on April 1, 1993. As clarified by the parties in the prehearing stipulation, petitioner cites three broad grounds for invalidating that order: (a) the original development order was constructively abandoned and therefore could not be amended, (b) the right to request an amendment of the original development order did not transfer to KPM, a successor owner to the original developer, and (c) the County did not have authority to revive the original development order and extend its termination date. In its proposed recommended order, however, petitioner addresses only the third issue, that is, whether the County had authority to revive an expired development order. By failing to address the remaining claims, the undersigned assumes that petitioner has abandoned these contentions. Nonetheless, and for the sake of providing a complete factual and legal record in the event of an appeal, the undersigned will discuss the other two issues.

B. Standing

15. In its amended petition, as clarified by the court's opinion in *Edgewater Beach Owners Association, Inc. v. Board of County Commissioners of Walton County, Florida*, 645 So.2d 541 (Fla. 1st DCA 1994), petitioner contends it has standing as an affected land owner to challenge the amended development order because its retention pond would be affected by the development. In other words, petitioner alleges that "the 'intensity' of the use of the retention pond would increase beyond its current use under KPM's plan."

16. Under the original stormwater plans for the project, a 10,000 square foot wet retention pond designed to capture stormwater runoff was constructed that straddles what is now the boundary between petitioner's and KPM's property. Approximately 3,000 square feet of the pond are located on KPM property. The pond was intended to serve all six phases of the project.

17. Assuming KPM develops its property, and the surface stormwater from that development is released into the wet retention pond, the pond will be impacted. However, KPM intends to utilize a stormwater design for phase III that provides for the retention of 100 percent of its stormwater on its own property. A retaining wall built along the edge of the pond would prevent any surface water runoff from KPM's development from entering the pond. Since surface water now flows into the pond from KPM's property in its undeveloped state, the retaining wall plan will not increase, and will probably decrease, the volume of water currently entering the pond.

18. Notwithstanding this reduction in surface water runoff, petitioner contends that the development proposed on KPM property will influence the ground water flow into the retention pond. More specifically, it argues that in light of the geophysical characteristics of the property, some of the water which percolates from KPM's retention ponds will flow underground and impact the function of petitioner's retention pond.

19. There will, of course, be a lateral exchange of water between KPM's and petitioner's property. In other words, in the same way that petitioner would be affected by KPM, KPM would also be affected by petitioner. This

exchange of water is uncontrollable and also occurs between petitioner's property and all other adjacent properties. However, there is no evidence of record as to whether KPM's development would have any discernable effect on the water table. That is to say, there is no evidence to support a finding that, beyond the lateral exchange of water that now occurs, the proposed development would have a measurable impact on the water table. Even petitioner's own expert conceded as much. Given these considerations, it is found that the intensity of the use of petitioner's retention pond will not increase beyond its current use under KPM's plan. Therefore, petitioner is not an affected land owner and thus it lacks standing to bring this action.

C. Was the Original Development Order Constructively Abandoned?

20. In the prehearing stipulation, petitioner argues that the original developer constructively abandoned the original development order. According to petitioner, this occurred either through foreclosure of the original developer's interests or through actions or omissions by KPM.

21. The DCA does not recognize constructive abandonment as a concept applicable to DRI development orders. Indeed, the only mechanism for abandoning a DRI development order is the procedure set forth in Rule 9J-2.0251, Florida Administrative Code. KPM made no attempt to initiate the abandonment procedures specified in the rule.

22. There is insufficient evidence to establish that KPM evinced an intent to abandon development of its property. Rather, the evidence establishes that KPM considered the original development order to be valuable and took affirmative steps to assure its viability. While it is true that the prior owner of the property did go bankrupt, even petitioner's expert recognized that bankruptcy alone could not be deemed to constitute an abandonment of a DRI development order.

23. As to the contention that KPM had no right to seek the changes approved by the County since it was not the original developer of the project, the evidence establishes that almost all DRIs in Florida have been sold subsequent to the issuance of their original DRI development orders. The DCA regards a DRI development order as incidental to the land itself, with the rights and obligations of the development order transferring to subsequent purchasers when title is transferred. In other words, a DRI development order runs with the land. Therefore, as the successor in title to the land, KPM had the right to seek changes approved by the County.

D. Can An Expired Development Order be Revived?

24. Petitioner further contends that a local government has no authority to revive a DRI development order after it has expired. In this case, the County issued an amended development order on January 26, 1993, or almost six months after the original development order had expired.

25. The build-out date in a development order is the date by which the developer is to have completed the vertical structures. This date is important for assessing impacts such as public capacity (e. g., water, sewer and transportation). If a build-out date is missed, there may no longer be adequate public capacity to accommodate the proposed development.

26. A termination date is the date at which the development order expires. Until 1985, there was no requirement in chapter 380 that a DRI development order

include an expiration date. The expiration date is typically set at two to five years after the build-out date. This date provides a local government with the specific point in time at which it can determine whether the proposed development is still compatible with the community.

27. The local government must determine whether an extension of the development order would create additional regional or state impacts, and if not, whether the extension should be granted. If the proposed change creates additional regional impacts, it constitutes a substantial deviation which must undergo additional DRI review. Even if the local government determines that the extension of a development order, after expiration, will not create additional regional or state impacts, the local government has the authority to deny such an extension.

28. On the other hand, the DCA has only one decision with respect to termination date extensions - - whether such an extension will create additional regional or state impacts. Consequently, the DCA regards the extension of a termination date as largely a local decision.

29. Since at least 1987, or well before the expiration of the original development order, the DCA has advised local governments and DRI developers that expired DRI development orders could be revived by the local government based on local considerations, such as whether the development is still compatible with the surrounding community. This interpretation of the statute was not shown to be clearly erroneous or unreasonable.

30. Petitioner's expert disagreed with the above interpretation since he opined that permitting a local government to revive an expired development order would defeat efforts to plan for the future and hamper the ability of adjacent local governments to implement their plans of development. While this view may have some justification from a planning perspective, the DCA's interpretation of the DRI statutes is also reasonable.

31. The amended development order in issue approved both an extension of the termination date and an extension of build-out dates. The DCA determined that the changes actually approved would not create additional regional or state impacts. Petitioner has not challenged this determination.

CONCLUSIONS OF LAW

32. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Sections 120.57(1) and 380.07, Florida Statutes.

33. As the party challenging the amended development order, petitioner bears "both the ultimate burden of persuasion and the burden of going forward." *Young v. Department of Community Affairs*, 625 So.2d 831, 835 (Fla. 1993).

34. In order to have standing to challenge a development order under Section 380.07(2), Florida Statutes, petitioner must be "the owner, the developer, or the state land planning agency." In this case, petitioner has alleged that it is "the owner" of affected property, that is, it owns a retention pond that will be impacted by KPM's development. Or, as stated by the court in *Edgewater Beach Owners Association, Inc. v. Board of County Commissioners of Walton County, Florida et al*, 645 So.2d 541, 543 (Fla. 1st DCA

1994), in order to prove up its allegations of standing at hearing, petitioner must show that "the 'intensity' of the use of the retention pond would increase beyond its current use under KPM's plan."

35. The greater weight of evidence shows that petitioner failed to prove that, under KPM's plan, the intensity of the use of the retention pond will increase beyond its current use. Indeed, the evidence shows that such surface water runoff will likely decrease by virtue of a new stormwater design to be used by KPM. At the same time, there is no evidence that water percolating from KPM's retention ponds will flow underground and impact petitioner's water table in any discernable way. This being so, it is concluded that petitioner fails to qualify as an affected property owner, and thus it lacks standing to bring this appeal. Notwithstanding this conclusion, however, the undersigned will address the other issues raised by petitioner in the event an appeal is taken by any party.

36. Petitioner first argues that the original development order has been constructively abandoned, either through foreclosure of the original developer's interests or through actions or omissions by KPM. As previously stated in finding of fact 21, Rule 9J-5.0251, Florida Administrative Code, establishes the only mechanism by which a developer can abandon a DRI. This rule is derived from Section 380.06(26), Florida Statutes, which requires the DCA to adopt rules to "establish the process for local governments to follow in the event a developer proposes to abandon its (DRI)." Significantly, the statute does not reference any alternative mechanism for abandoning a DRI development order, and the DCA interprets the statute to mean that such an order can only be abandoned through the formal procedures promulgated by the agency. This interpretation of the law has not been shown to be clearly erroneous or unreasonable, and the same has accordingly been accepted.

37. Petitioner further alleges that KPM abandoned the DRI through its actions or omissions. For the reasons set forth in finding of fact 22, this argument is deemed to be without merit.

38. Finally, petitioner contends that the County lacked authority to revive and extend an expired development order. More specifically, petitioner argues in its proposed recommended order that the authority to revive such an order is inconsistent with the requirement in Section 380.06(15)(c)2., Florida Statutes, that development orders include a termination date. There are no reported appellate decisions or final administrative orders which address this issue.

39. Section 380.06(15)(c)2., Florida Statutes, provides that the development order "shall include a termination date that reasonably reflects the time required to complete the development." The statute is silent on whether a local government has authority to extend that termination date. For the following reasons, the undersigned concludes that the County had authority to adopt resolution 93-2.

40. To begin with, Section 380.06, Florida Statutes, was not intended to limit a local government's authority to make decisions regarding development within its jurisdiction. Rather, the DRI statute establishes additional procedures, over and above those already imposed by state and local regulations, for the review of any development having regional impact. Indeed, case law confirms this proposition. See, e. g., *Friends of the Everglades v. Board of County Commissioners of Monroe County*, 456 So.2d 904, 908 (Fla. 1st DCA 1984).

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOSEPH L. CUTTER,)
)
 Petitioner,)
)
 vs.) CASE NO. 96-0602
)
 DEPARTMENT OF ENVIRONMENTAL)
 PROTECTION,)
)
 Respondent,)
 and)
)
 BUCKEYE FLORIDA, L.P.,)
)
 Intervenor.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings, on August 14 and 16, 1996 and September 23, 1996 in Perry, Florida.

APPEARANCES

For Petitioner: Joseph L. Cutter, Pro Se
Route 1 Box 1130
Perry, Florida 32347

For Respondent: Jeffrey Brown, Esquire
Department of Environmental Protection
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Tallahassee, Florida 32399-3000

For Intervenor: Terry Cole, Esquire
Patricia A. Renovich, Esquire
Oertel, Hoffman, Fernandez and Cole, P.A.
Post Office Box 6507
Tallahassee, Florida 32314-6507

STATEMENT OF THE ISSUES

The issues are: (1) whether Petitioner Joseph L. Cutter has a substantial interest in Respondent Department of Environmental Protection's adoption of the 1995 report entitled "Delineation of Ground and Surface Water Areas Potentially Impacted by an Industrial Discharge to the Fenholloway River of Taylor County, Florida"; (2) whether Respondent Department of Environmental Protection properly identified the area along the Fenholloway River where river water containing an industrial discharge may potentially impact ground and surface water; and (3) whether Buckeye Florida, L.P. has standing to participate as an Intervenor in this proceeding.

PRELIMINARY STATEMENT

On or about December 7, 1995, Petitioner Joseph L. Cutter (Mr. Cutter) filed a request for a formal hearing to challenge the alleged joint decision of Respondent Department of Environmental Protection (DEP) and the Department of Health and Rehabilitative Services (DHRS) to stop providing bottled water to certain residents of Taylor County effective January 1, 1996. On or about January 8, 1996, DEP issued an order dismissing the petition with leave for Mr. Cutter to amend by providing information required by Rule 62-103.155, Florida Administrative Code.

On or about January 22, 1996 Mr. Cutter filed an Amended Petition challenging DEP's 1995 study delineating the ground and surface water areas potentially impacted by an industrial discharge to the Fenholloway River in Taylor County, Florida. The Amended Petition also requested that DHRS continue to supply bottled water to certain residents. DEP referred the Amended Petition to the Division of Administrative Hearings for the assignment of an Administrative Law Judge on January 31, 1996.

On February 16, 1996 the undersigned entered an Order giving DHRS an opportunity to be joined as party. This order also required DEP to advise the undersigned of its position on DHRS's party status.

DHRS filed a Response Declining Party Status on February 26, 1996 stating that it has no funding for a bottled water program. DHRS asserted that it acts only at the direction of DEP with regard to the distribution of bottled water or coupons which are redeemable for bottled water.

DEP filed a Response to Order on February 26, 1996 which stated that if Mr. Cutter was successful in his challenge to DEP's hydrogeologic study, DHRS would be involved in the decision whether to provide Mr. Cutter with bottled water. DEP took the position that DHRS should not be a party if the sole issue involved the validity of DEP's study.

On March 8, 1996 the undersigned issued a Notice of Hearing scheduling this matter for formal hearing on May 15, 1996.

On April 2, 1996 Intervenor Buckeye Florida, L.P. (Buckeye) filed a Petition for Leave to Intervene. Mr. Cutter filed a response in opposition to this petition on April 11, 1996. The undersigned granted Buckeye intervenor status, subject to proof of standing at hearing, on April 15, 1996.

On April 22, 1996 DEP filed a Motion for Continuance. The undersigned granted this motion and rescheduled the case for hearing on July 17, 1996. DEP requested a second continuance by motion dated June 10, 1996. The undersigned granted this motion and rescheduled the case for hearing on August 14 and 16, 1996.

On August 2, 1996 DEP and Buckeye filed a Motion in Limine and Request for Oral Argument. On August 7, 1996 the parties filed a Prehearing Stipulation. After hearing oral argument, the undersigned entered an order dated August 8, 1996 excluding certain of Mr. Cutter's proposed exhibits and the proposed testimony of some of Mr. Cutter's witnesses as not relevant to the instant proceeding. The undersigned reserved ruling on objections to other exhibits proposed by Mr. Cutter. An amendment to the Prehearing Stipulation was filed on August 12, 1996.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OPTIPLAN, INC.,)
)
 Petitioner,)
)
 vs.) CASE NO. 95-4560BID
)
 THE SCHOOL BOARD OF BROWARD COUNTY,)
 FLORIDA.)
)
 Respondent,)
 and)
)
 VISION CARE, INC., d/b/a VISION)
 SERVICE PLAN,)
)
 Intervenor.)
 _____)

RECOMMENDED ORDER

Pursuant to written notice, a formal hearing was held in this case on October 19, 20 and 24, 1995, at Fort Lauderdale, Florida, before Michael M. Parrish, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Mitchell Berger, Esquire
Holiday Russell, Esquire
Berger & Davis
100 Northeast 3rd Avenue, Number 400
Fort Lauderdale, Florida 33301

For Respondent: Edward J. Marko, Esquire
Broward County School Board
1401 East Broward Boulevard, Number 201
Post Office Box 4369
Fort Lauderdale, Florida 33338

For Intervenor: Leonard A. Carson, Esquire
Rosa H. Carson, Esquire
Carson & Adkins
2873 Remington Green Circle, Suite 101
Tallahassee, Florida 32308

STATEMENT OF THE ISSUES

The basic issue in this case is whether the School Board of Broward County, Florida, acted in a fraudulent, arbitrary, illegal, or dishonest manner in determining to award the Group Vision Care contract under RFP 96-029S to Vision

Care, Inc., d/b/a Vision Service Plan. The Petitioner described the following subsidiary issues in its unilateral Proposed Pretrial Stipulation:

(1) That the School Board's and the Insurance Committee's scoring of the cost, willing and able, and M/WBE sections of RFP No. 96-029S was illegal, arbitrary, and capricious, for reasons including, but not limited to, the fact that the scoring was conducted based upon VSP's proposed rate which is inadequate under Florida law governing prepaid limited health organizations.

(2) That Vision Service Plan's ("VSP") response to RFP No. 96-029S without making a rate filing with the Florida Department of Insurance ("DOI") and without DOI's approval of the proposed rate was illegal, fraudulent, and dishonest.

(3) RFP No. 96-029S is illegal insofar as it relies upon minority based classifications in violation of the Florida and United States Constitutions, and that the RFP is fraudulent and illegal insofar as it does not disclose that union or collective bargaining agent participants on the Insurance Committee could overrule the Insurance Committee's scoring and choice of a vision care provider by demanding impact bargaining.

PRELIMINARY STATEMENT

On August 10, 1995, Optiplan, Inc. (Optiplan) filed a formal written protest. This protest was heard and rejected by the School Board of Broward County, Florida, (The School Board) on September 5, 1995. On September 15, 1995, this case was referred to the Division of Administrative Hearings for a formal hearing upon Optiplan's request that the formal written protest be referred to the Division of Administrative Hearings.

Vision Care, Inc., d/b/a Vision Service Plan (VSP) filed a Petition to Intervene on September 21, 1995, which was granted by an order of September 26, 1995, subject to proof of standing at the final hearing. At the hearing, the parties stipulated to VSP's standing.

At the beginning of the formal hearing, Optiplan filed a Motion To Conform Pleadings to the Evidence; the School Board made an oral Motion in Limine in which VSP joined; and the School Board filed an objection to a discovery request by Optiplan.

Optiplan's Motion to Conform Pleadings to the Evidence was denied on the following grounds. The statutory scheme regulating bid protest proceedings requires that all issues or reasons for the protest be stated with particularity within the statutory time frames for filing a formal protest. Section 120.53(5)(b), Florida Statutes, does not permit material amendments or additions of new issues beyond the statutory time period for filing a formal protest. The issues described in Optiplan's Motion To Conform Pleadings to Evidence are not raised with particularity in the formal written protest document. Accordingly, the motion was denied.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AMISUB, (NORTH RIDGE)	
HOSPITAL), INC., d/b/a NORTH)	
RIDGE MEDICAL CENTER, et al.)	
)	
Petitioners,)	
)	
vs.	)	CASE NOS. 94-1012
	)	94-1016
AGENCY FOR HEALTH CARE	)	94-1017
ADMINISTRATION, and CLEVELAND	)	94-1018
CLINIC FLORIDA HOSPITAL,)	
)	
Respondents.)	
)	

RECOMMENDED ORDER

These consolidated cases were heard in Tallahassee, Florida, from June 2, 1994, through June 16, 1994 by David M. Maloney, Hearing Officer for the Division of Administrative Hearings.

With the exception of the Agency for Health Care Administration which filed a Notice of Adoption, the parties all filed proposed recommended orders by August 16, 1994. Rulings on the parties' proposed findings of fact are contained in the appendix to this order.

APPEARANCES

For Petitioners	David Ashburn, Esquire
Amisub, Inc.:	Michael J. Cherniga, Esquire
	Greenburg, Traurig, Hoffman, et al.
	111 South Monroe Street
	Tallahassee, Florida 32301
North Broward Hospital	Susan Horowitz Maurer, Esquire
District d/b/a	Sean M. Frazier, Esquire
Broward General Medical	Panza, Maurer, Maynard
Center, Imperial	3081 East Commercial Boulevard
Point Medical Center,	Suite 200
and North Broward	Fort Lauderdale, Florida 30303
Medical Center:	
For Intervenor	William B. Wiley, Esquire
Holy Cross Hospital	Charles A. Stampelos, Esquire
Inc.:	Darrell White, Esquire
	McFarlain, Wiley, Cassedy and
	Jones, P.A.
	215 South Monroe Street, Suite 600
	Tallahassee, Florida 32301

For Respondents J. Robert Griffin, Esquire
Agency for Health Richard A. Patterson, Esquire
Care Administration: Agency for Health Care
Administration
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Tallahassee, Florida 32303

Cleveland Clinic Robert A. Weiss, Esq.
Florida Hospital, Inc.: Parker, Hudson, Rainer & Dobbs
The Perkins House, Suite 200
118 North Gadsden Street
Tallahassee, Florida 32301

Jonathan L. Rue, Esquire
Parker, Hudson, Rainer & Dobbs
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285 Peachtree Avenue, Northeast
Atlanta, Georgia 30303

STATEMENT OF THE ISSUE

Whether Cleveland Clinic Florida Hospital's application for a Certificate of Need to operate an adult inpatient cardiac catheterization program in AHCA District 10 should be granted or denied by the Agency for Health Care Administration?

PRELIMINARY STATEMENT

On February 25, 1994, the Division of Administrative Hearings received a Notice signed by the Agency Clerk for the

Agency for Health Care Administration, ("AHCA," or the "Agency.") The notice advised that a request for a formal administrative hearing had been received from Amisub (North Ridge Hospital), Inc., d/b/a North Ridge Medical Center. The notice further requested that a hearing officer be assigned to conduct all necessary proceedings culminating in a Recommended Order.

Attached to the notice was North Ridge's Petition for Formal Administrative Proceedings. The petition contests the decision by the Agency to approve Cleveland Clinic Florida Hospital's application to establish an adult inpatient cardiac catheterization program in AHCA District 10.

Immediately after the case was docketed by the Division's clerk's office as Case No. 94-1012, the Division of Administrative Hearings received six more notices from the Agency with petitions challenging the decision to approve Cleveland Clinic's Florida Hospital's application. The six petitions were brought by Columbia Hospital Corporation of South Broward d/b/a Westside Regional Medical Center, Florida Medical Center, Ltd., NME Hospital, Inc. d/b/a Hollywood Medical Center, North Broward Hospital District d/b/a Broward General Medical Center, North Broward Hospital District d/b/a Imperial Point Medical Center, and North Broward Hospital District d/b/a North Broward Medical Center. These were docketed as Case Nos. 94-1013, 94-1014, 94-1015, 94-1016, 94-1017 and 94-1018, respectively.

Part of the Agency's submission were Notices of Related Petitions. These informed the Division of Administrative Hearings that the seven cases were

related to each other. By order of the Division, the seven cases were consolidated.

In March of 1994, Cleveland Clinic Florida Hospital filed a petition for formal administrative hearing challenging CON application No. 7451 by NME Hospital, Inc., d/b/a Hollywood Medical Center. Upon reaching the Division of Administrative Hearings, the case was docketed as Case No. 94-1652 and consolidated with the first seven cases. It was subsequently dismissed as moot when NME Hospital, Inc., voluntarily dismissed Case No. 94-1015. Dismissed also in pre-hearing proceedings were Case Nos. 94-1013, and 94-1014.

Holy Cross Hospital, Inc., filed a petition to intervene in the consolidated cases. The petition was granted subject to proof of standing at hearing. On June 2, 1994, hearing commenced in the four remaining consolidated cases, Case Nos. 94-1012, 94-1016, 94-1017, and 94-1018.

At hearing, CCFH presented the testimony of 14 witnesses and offered into evidence 33 exhibits, all of which were admitted. The District presented the testimony of 7 witnesses, and introduced the video deposition of Dr. Carol Moody as well as 16 exhibits, all admitted into evidence. North Ridge presented the testimony of two witnesses and introduced two exhibits, both of which were received in evidence. Holy Cross introduced three exhibits, all received in evidence, and the testimony of one witness. The Agency presented the testimony of one witness and one exhibit, which was admitted into evidence.

FINDINGS OF FACT

The parties

1. Cleveland Clinic Florida Hospital, ("CCFH,") is a not-for-profit corporation which owns and operates a 153 bed acute-care hospital located within the incorporated limits of Fort Lauderdale on Route A1A in the mid-section of Broward County, AHCA District 10. Among its 153 medical and surgical beds are approximately 11 beds in the intensive care unit and a similar number of intermediate care beds. CCFH is not a Level II trauma center; nor does it provide comprehensive medical rehabilitation services or the tertiary health care services of open heart surgery or organ transplantation. But, fully accredited by the Joint Commission of Health Care Organizations for Special Care Units, provision of tertiary care services in South Florida is a long-term goal of CCFH.

2. Amisub (North Ridge Hospital), Inc., d/b/a North Ridge Medical Center, owns and operates a general acute-care hospital located in Broward County. It provides adult inpatient cardiac catheterization services as well as open heart surgery services.

3. North Broward Hospital District, (the "District,") owns and operates hospitals in Broward County. Among the hospitals are three that provide, individually, adult inpatient cardiac catheterization services. The three hospitals, each a division of the District, are known as Broward General Medical Center, ("BGMC,") Imperial Point Medical Center, ("IPMC,") and North Broward Medical Center, ("NBMC,") In addition to cardiac cath services, BGMC provides open heart surgery services.

4. Holy Cross Hospital is located in the northern part of Broward County within thirty minutes travel time of CCFH by emergency vehicle. It has 587 total licensed beds; 535 are acute care beds, 9 are level II NICU beds and 43

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. ANTHONY'S HOSPITAL, INC.)
)
 Petitioner,)
)
vs.) CASE NO. 94-1010
)
AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
 Respondent,)
and)
)
BAYFRONT MEDICAL CENTER, INC.,)
and LARGO MEDICAL CENTER, INC.,)
)
 Intervenors.)
_____)

RECOMMENDED ORDER

This case was heard from July 20 through July 22, 1994, and from July 25 through July 28, 1994 in Tallahassee, Florida, by David M. Maloney, Hearing Officer for the Division of Administrative Hearings.

St. Anthony's Hospital, Inc., and Largo Medical Center, Inc., filed proposed recommended orders on October 12, 1994. Two days later, October 14, 1994, St. Anthony's filed an amended proposed recommended order and Bayfront Medical Center, Inc., and the Agency for Health Care Administration filed a joint proposed recommended order. Rulings on the findings of fact in the amended proposed recommended order and proposed recommended orders of the Respondent and Intervenors are contained in the appendix to this order.

APPEARANCES

For Petitioner: Robert D. Newell, Jr.
 NEWELL & STAHL
 817 North Gadsden Street
 Tallahassee, Florida 32303

For Respondent: S. Dean Bunton
 Agency for Health Care Administration
 325 John Knox Road
 The Atrium, Suite 301
 Tallahassee, Florida 32303-4131

For Intervenor: Stephen A. Ecenia
Bayfront Thomas W. Konrad
Rutledge, Ecenia, Underwood
Purnell & Hoffman, P.A.
215 South Monroe Street, Suite 420
Tallahassee, Florida 32301-1841

For Intervenor: James C. Hauser
Largo Parker, Skelding, Labasky,
Corry, Eastman & Hauser, P.A.
Post Office Box 669
Tallahassee, Florida 32302

John D. C. Newton, II
Suzanne Mann
Messer, Vickers, Caparello,
Madsen & Goldman, P.A.
Post Office Box 1876
Tallahassee, Florida 32302-1876

STATEMENT OF THE ISSUE

Whether this case presents "not normal circumstances" that lead to award to St. Anthony's Hospital, Inc., of a certificate of need for an Open Heart Surgery program?

PRELIMINARY STATEMENT

On February 25, 1994, the Division of Administrative Hearings received a Notice signed by the Agency Clerk for the Agency for Health Care Administration, ("AHCA," or the "Agency.") The notice advised that a request for a formal administrative hearing had been received from St. Anthony's Hospital, Inc. The notice further requested that a hearing officer be assigned to conduct all necessary proceedings culminating in a Recommended Order.

Attached to the notice was St. Anthony's Petition for Formal Hearing. The petition contests the preliminary denial by the Agency of St. Anthony's application, CON application No. 7418, for a certificate of need to provide open heart surgery at St. Anthony's Hospital in AHCA District 5.

Subsequent to the docketing of the case as No. 94-1010, the case was consolidated with another case. The case, No. 94-1011, initiated by NME Hospitals, Inc. d/b/a Palms of Pasadena Hospital was later voluntarily dismissed and a closing order was entered on June 13, 1994. This case, Case No. 94-1010, then proceeded to hearing by itself on July 20, 1994. In the meantime, Petitions to Intervene, filed by Bayfront Medical Center, Inc., and Largo Medical Center, Inc., were granted subject to proof of standing at hearing.

At hearing, St. Anthony's presented the testimony of 11 witnesses and offered into evidence 19 exhibits, Nos. 1-14, 16, 19-21 and 23, all of which were admitted into evidence with the exceptions of portions of St. Anthony's Exhibit No. 23. Official recognition was taken of St. Anthony's Exhibit No. 22. St. Anthony's Exhibits 15, 17 and 18 either were not offered or were withdrawn. Largo presented the testimony of 3 witnesses and offered 7 exhibits, Nos. 1-7, all of which were admitted into evidence. Bayfront offered the testimony of 2 witnesses and 11 exhibits, Nos. 1-3 and 5-12. Bayfront Ex. No. 4 was not

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IAN G. KOBLICK and MARINE)	
RESOURCES DEVELOPMENT FOUNDATION,)	
)	
Petitioners,)	
)	
vs.	)	CASE NOS. 90-2403
	)	91-0258
)	
STATE OF FLORIDA, BOARD OF)	
TRUSTEES OF THE INTERNAL)	
IMPROVEMENT TRUST FUND, and)	
DEPARTMENT OF NATURAL RESOURCES,)	
)	
Respondents,)	
)	
and)	
)	
IZAAK WALTON LEAGUE,)	
)	
Intervenor.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in these consolidated cases at Homestead, Florida, on April 24, 25, and 26, 1991, before Michael M. Parrish, a duly designated Hearing Officer of the Division of Administrative Hearings. Appearances at the hearing were as follows:

APPEARANCES

FOR PETITIONERS:	W. Craig Eakin, Esquire William R. Scherer, Esquire Conrad, Scherer and James, P.A. Post Office Box 14723 Fort Lauderdale, Florida 33302
FOR RESPONDENTS:	Suzanne B. Brantley, Esquire Kenneth E. Easley, Esquire Associate General Counsel MS-35 3900 Commonwealth Boulevard Tallahassee, Florida 32399-3000
FOR INTERVENOR:	Maureen B. Harwitz, Esquire 2390 Bayview Lane North Miami, Florida 33181

STATEMENT OF THE ISSUE

The basic issue in Case No. 90-2403 is whether the application of the Petitioner, Ian G. Koblick, for a lease of sovereign submerged lands and an easement for an appurtenant previously filled area should be granted or denied. The Board of Trustees of the Internal Improvement Trust Fund propose to deny the application. The Intervenor, Izaak Walton League, opposes the application and supports the proposed denial.

The basic issue in Case No. 91-0258 is whether certain action proposed by the Board of Trustees of the Internal Improvement Trust Fund regarding filled areas in John Pennekamp Coral Reef State Park affects the substantial interests of the Petitioner, Marine Resources Development Foundation.

PRELIMINARY STATEMENT

On April 12, 1990, the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, voted to deny the lease sought by Petitioner Koblick and at the same time voted to approve staff recommendations requiring removal of docks and mooring pilings and payment of lease fees in arrears. Petitioner Koblick filed a timely Petition For Administrative Hearing challenging the proposed denial of his lease application. Petitioner Koblick's petition was in due course referred to the Division of Administrative Hearings for formal proceedings. The Intervenor, Izaak Walton League, Mangrove Chapter, filed a Petition, and later an Amended Petition, seeking to intervene in these proceedings in opposition to the lease application and in support of the proposed denial of the lease. Intervention was allowed, subject to proof of standing at the formal hearing. Thereafter, on March 15, 1991, Petitioner Koblick filed a Motion To Amend Petition For Administrative Hearing. The motion was accompanied by a proposed Amended Petition For Administrative Hearing. By order issued March 25, 1991, the motion to amend the petition was denied.

At the formal hearing on April 24, 25, and 26, 1991, the Petitioners and the Respondents offered numerous exhibits and presented the testimony of numerous witnesses. The Intervenor presented the testimony of two standing witnesses and otherwise relied on evidence offered by the other parties. At the conclusion of the formal hearing on April 26, 1991, the parties were advised on the record that the deadline for filing their proposed recommended orders would be 30 days from the date of the filing of the transcript of the formal hearing. The transcript of the formal hearing was filed with the Hearing Officer on June 6, 1991. By memorandum dated June 12, 1992, counsel for all parties were advised that the transcript had been filed and were also specifically advised that ". . . the deadline for filing the parties' respective proposed recommended orders will be July 5, 1991." The Respondents and the Intervenor filed their respective proposed recommended orders on July 5, 1991. The Petitioners' proposed recommended order (titled "Petitioner's Memorandum In Support Of Recommended Order") was filed on July 9, 1991, four days late. It consisted of one hundred twelve pages.

On July 17, 1991, the Respondents filed a Motion To Strike Petitioner's Memorandum In Support Of Recommended Order. The primary grounds for the motion were that the Petitioners' document was in violation of Rule 22I-6.031, Florida Administrative Code, which requires that proposed recommended orders be submitted on time and that such proposals not exceed forty pages in length, absent prior leave to file a longer document. The Petitioners filed a timely response to the motion in which, in essence, they requested that they be excused

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SUBURBAN MEDICAL HOSPITAL, INC.,)
)
 Petitioner,)
)
 vs.) CASE NO. 89-4445
)
 DEPARTMENT OF HEALTH AND)
 REHABILITATIVE SERVICES,)
)
 Respondent,)
)
 and)
)
 BAPTIST HOSPITAL OF MIAMI, INC.,)
 and SOUTH MIAMI HOSPITAL,)
)
 Intervenor.)
)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on January 23-25 and January 29-30, 1990 in Miami, Florida and on February 1-2, 1990, in Tallahassee, Florida, before J. Stephen Menton, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Daniel C. Minkes, Esquire
Suburban Medical 17615 S.W. 97th Avenue
Hospital, Inc. Miami, Florida 33157

Silvio Amico, Esquire
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Miami, Florida 33173

For Respondent: Thomas R. Cooper, Esquire
Department of Edward Labrador, Esquire
Health and 2727 Mahan Drive, Suite 103
Rehabilitative Tallahassee, Florida 32308
Services

For Intervenor: Kyle Saxon, Esquire
Baptist Hospital Catlin, Saxon, Tuttle, & Evans
of Miami, Inc. 1700 Alfred I. Dupont Building
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Miami, Florida 33131

Jay Adams, Esquire
1519 Big Sky Way
Tallahassee, Florida 32301

South Miami Jean Laramore, Esquire
Hospital: 7007 McBride Pointe
Tallahassee, Florida 32312

STATEMENT OF THE ISSUE

The issue in this case is whether Suburban Medical Hospital, Inc.'s application for a certificate of need to convert an existing outpatient and ambulatory surgery center to a 36-bed osteopathic hospital should be approved.

PRELIMINARY STATEMENT

On March 30, 1989, Petitioner, Suburban Medical Hospital, Inc. ("Suburban") filed an application with the Respondent, Department of Health and Rehabilitative Services ("HRS"), for a certificate of need ("CON") to convert an existing outpatient and ambulatory surgical center into a 36 bed acute care osteopathic hospital. The application was filed in accordance with the requirements of Section 381.701, et seq., Florida Statutes. The application was assigned CON #5868 by HRS. A supplement to this application (the "Omissions Response") was filed on May 15, 1989 in response to a letter from HRS detailing omissions in the application. (The original application as supplemented will hereinafter be referred to as the "Application".) After review, HRS concluded that Suburban's Application did not sufficiently comply with the statutory and rule standards to warrant the issuance of the CON. HRS advised Suburban of its decision in a letter dated July 14, 1989.

By notice published in the Florida Administrative Weekly dated July 28, 1989, HRS noticed its intent to deny the Application. Suburban timely filed a petition for a formal administrative hearing to contest HRS' decision. The case was referred to the Division of Administrative Hearings which noticed and conducted the hearing. Timely Petitions to Intervene in opposition to the Application were filed by Baptist Hospital of Miami Inc., ("Baptist") and South Miami Hospital ("South Miami"). Upon consideration of the pleadings and after hearing argument of counsel, the petitions of both Baptist and South Miami were granted subject to proof of standing at the hearing.

The Osteopathic Physicians Association of Dade and Monroe Counties, Inc. ("OPA") also filed a Petition to Intervene. OPA sought to intervene in support of the CON Application filed by Suburban. For the reasons set forth in an Order dated January 2, 1990, O.P.A.'s Petition to Intervene was denied. Counsel for OPA subsequently appeared as co-counsel for Suburban at the hearing.

Prior to the final hearing, South Miami and Baptist filed Motions in Limine seeking to exclude the testimony and exhibits prepared by Petitioner's experts Darrell Lumpkin, Paul Eiseman, and Howard Fagin. Those Motions argued that the evidence sought to be excluded related to new and amended tables or information prepared subsequent to the denial of the CON Application by HRS and that this evidence was an untimely and impermissible attempt to supplement and/or amend the Application. Petitioner contended it was not attempting to amend its Application and that the evidence was simply being offered to support the Application. During a preliminary hearing on the Motion in Limine, the Hearing Officer advised the Petitioner that it would not be permitted to amend the Application and the evidence would only be considered to the extent that it