

CCA Official Filing
4/18/2005 4:42 PM*****

4:42 PM*****

Timolyn Henry*****1

Timolyn Henry

From: Elizabeth_Carrero@fpl.com
Sent: Monday, April 18, 2005 4:17 PM
To: Filings@psc.state.fl.us
Cc: Wade_Litchfield@fpl.com; Natalie_Smith@fpl.com; Bill_Feaster@fpl.com; Kirk_Gillen@fpl.com; Nanci_Nesmith@fpl.com; Jack_Leon@fpl.com
Subject: Electronic Filing for Docket No. 050045-EI/ Florida Power & Light Company's Response to Motion to Modify Order Establishing Procedure

Attachments: FPL's Response to Motion to Modify Ord Establishing Procedure.4.18.05.doc



FPL's Response
to Motion to Mo.

CMP _____
COM 5
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
RCA _____
SCR _____
SEC 1
OTH kimp

Electronic Filing

a. Person responsible for this electronic filing:

R. Wade Litchfield, Senior Attorney
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408
(561) 691-7101
wlitchf@fpl.com

b. Docket No. 050045-EI

In re: Petition for rate increase by Florida Power & Light Company

c. Document being filed on behalf of Florida Power & Light Company.

d. There are a total of 6 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response to Motion to Modify Order Establishing Procedure

(See attached file: FPL's Response to Motion to Modify Ord Establishing Procedure.4.18.05.doc)

Thank you for your attention and cooperation to this request.

Elizabeth Carrero, Legal Asst
Wade Litchfield, Esq. and Natalie Smith, Esq.
Phone: 561-691-7100
Fax: 561-691-7135
email: elizabeth_carrero@fpl.com

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by)
Florida Power & Light Company)
_____)

Docket No: 050045-EI

Filed: April 18, 2005

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO MOTION TO MODIFY
ORDER ESTABLISHING PROCEDURE**

NOW, BEFORE THIS COMMISSION, through undersigned counsel, comes Florida Power & Light Company ("FPL" or the "Company"), and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response to the Motion to Modify Order Establishing Procedure filed April 11, 2005 on behalf of the Intervenors Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG"), the Florida Retail Federation ("FRF"), the Federal Executive Agencies ("FEA"), and the AARP (collectively "Intervenors"), and in support states:

1. FPL opposes the Motion to Modify the Order Establishing Procedure (the "Joint Motion"). The existing procedural schedule set forth in Order No. PSC-05-0347-PCO-EI, issued March 31, 2005 reasonably apportions time among the parties to Docket No. 050045-EI taking into account the advance notice to all potential participants of FPL's plans to file for base rate relief, the amount and format of information filed, the nature of the case, and other considerations. Redrawing the procedural schedule now, more than a month following the Company's filing can only prejudice the Company, cutting into an already limited opportunity for the Company to conduct discovery on the cases of an increasingly large number of

intervenors opposing FPL's petition. Any narrowing of the existing window within which FPL will have an opportunity to conduct such discovery would place FPL at a significant disadvantage in a case of such magnitude.

2. It has been common knowledge for many months leading up to FPL's filing that the Company would be petitioning the Commission for base rate relief effective January 1, 2006. Moreover, pursuant to Florida Administrative Code Rule, FPL's Test Year Letter was filed on January 21, 2005, sixty days in advance of filing its petition, the minimum filing requirements ("MFRs") and schedules, and testimony. Consequently, prospective participants have had plenty of notice to anticipate the Company's filing, arrange for outside consultants and support, and even to begin to review FPL's extensive publicly filed information in support of its case. Further, intervenors have had approximately three months from the time FPL made its base rate case filing and two months from the date their Joint Motion was filed to prepare and file their testimony.

3. FPL has filed testimony, MFRs and schedules pursuant to Chapter 366 and Commission form that has been prescribed by Rule. Thus, the data are readily presented in a format with which parties and Staff are familiar, and which lends itself to a relatively quick review of key indicators and issues for use by the parties in framing positions in the case. Though this is a significant case, it is not a case that presents new and complex issues for the parties to discover. Issues in rate cases are generally consistent and well known among all parties to this Docket. Indeed, discovery in rate cases often is propounded almost in formulaic fashion.

4. OPC is already well down the path of discovery. OPC has already propounded 450 requests, exclusive of subparts in this docket, a very large number when compared to FPL's

last rate case in 2001-2002, Docket No. 001148-EI, in which OPC propounded a total of 357 requests, exclusive of subparts. As a result, OPC will have an enormous quantity of responses and materials and documents available for review as early as the week of April 25, 2005, more materials perhaps than they requested in the entire rate in Docket No. 001148-EI, still almost seven weeks in advance of their testimony filing date. Included in such discovery is a request for information relative to rate case expenses, the example cited in paragraph 2 of the Joint Motion.

5. Other intervenors, on the other hand, haven't filed a single discovery request. Their delay, for whatever reason, should not be rewarded by an extension of time. They have had equal opportunity to begin their case preparation. They should not be permitted to take time from FPL's schedule to accommodate any failure on their part to initiate their case preparation. There is no reason for their delay, and it should not be rewarded by granting the Joint Motion.

6. FPL also opposes the blanket request to increase the number of discovery requests. With respect to OPC, the contention that increasing the limit would not unfairly burden FPL fails to take into consideration the fact the OPC already has served more requests for discovery, exclusive of subparts, in this docket than it did in the entire case in Docket No. 001148-EI. Moreover, the requests have been served in huge bundles, involving almost every facet of the Company's operations, and requiring the production of thousands of documents on the same due date. Doubling the number of requests is simply unreasonable and inconsistent with limits established in prior cases or a reasonable need in this case. Indeed, it is difficult to see how OPC intends to digest the volume of materials responsive to the amount of discovery already propounded. FPL does not object to responding to appropriate discovery that would provide meaningful input to OPC and others in their review of FPL's filing and the preparation of their case; however, FPL respectfully requests that the Pre-Hearing Officer carefully examine

OPC's legitimate need to propound such massive amounts of discovery in this case before simply opening the gate, the only practical effect of which may be to inundate FPL and its operations.

7. With respect to the other intervenors' request to increase discovery limits, while not inviting massive quantities of discovery for the sake of reaching a threshold, FPL respectfully submits that such parties currently have more than ample "headroom" within to begin their discovery. Considering that they have yet to serve any discovery, at this point such a request on their part is premature.

Respectfully submitted,

By: s/ R. Wade Litchfield
R. Wade Litchfield
Natalie F. Smith
Attorneys for Florida Power & Light
Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and by United States Mail this 18th day of April, 2005, to the following:

Wm. Cochran Keating, IV, Esquire
Katherine E. Fleming, Esquire
Jeremy Susac, Esquire
Florida Public Service Commission
Division of Legal Services
Gerald L. Gunter Building
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Harold A. McLean, Esquire
Charles J. Beck, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

John W. McWhirter, Esquire
c/o McWhirter Reeves, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
Attorneys for the Florida Industrial Power
Users Group

Timothy J. Perry, Esquire
McWhirter Reeves, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Attorneys for the Florida Industrial Power
Users Group

Miami-Dade County Public Schools *
c/o Jaime Torrens
Dist. Inspections, Operations and
Emergency Mgt.
1450 N.E. 2nd Avenue
Miami, Florida 33132

D. Bruce May, Jr., Esquire *
Holland & Knight, LLP
Post Office Drawer 810
Tallahassee, Florida 32302-0810
Attorneys for Miami-Dade County Public
Schools

David Brown, Esquire **
McKenna Long & Aldridge LLP
One Peachtree Center
303 Peachtree Street, N.E., Suite 5300
Atlanta, Georgia 30308
Attorneys for the Commercial Group

Michael B. Twomey, Esquire **
P.O. Box 5256
Tallahassee, FL 32314-5256
Attorney AARP

Robert Scheffel Wright, Esq. **
John T. LaVia, III, Esq.
Landers & Parsons, P.A.
310 West College Avenue
Tallahassee, Florida 32301
Attorneys for Florida Retail Federation

Major Craig Paulson, Esquire **
AFCESA/ULT
139 Barnes Drive
Tyndall Air Force Base, Florida 32403
Attorney for Federal Executive Agencies

* Indicates party of interest

** Indicates not an official party of record as of the date of this filing

By: s/ R. Wade Litchfield
R. Wade Litchfield
Natalie F. Smith
Attorneys for Florida Power & Light
Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420