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Attachments: 050045 Motion to Strike\_Limine\_or Alternative.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 050045-EI & Docket No. 050188-EI

In re: Petition for rate increase by Florida Power & Light Company
In re: 2005 Comprehensive Depreciation Studies by Florida Power & Light Company

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 9 pages.

e. The document attached for electronic filing is Citizens' Motion to Strike, Motion in Limine, and Alternative Motion for Leave to File Rebuttal Testimony.

(See attached file: 050045 Motion to Strike\_Limine\_or Alternative.doc)

Thank you for your attention and cooperation to this request.

MP \_\_\_\_\_

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OTH [ump]
7/21/2005

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for a Rate Increase )  
By Florida Power & Light )  
EI )  
Company )  
\_\_\_\_\_ )

Docket 050045-

In re: 2005 Comprehensive )  
050188-EI )  
Depreciation Studies by Florida )  
Power & Light Company )  
2005 )  
\_\_\_\_\_ )

Docket No.

Filed July 21,

**MOTION TO STRIKE, MOTION IN LIMINE, AND  
ALTERNATIVE MOTION FOR LEAVE TO FILE REBUTTAL TESTIMONY**

The Citizens of Florida (Citizens), by and through Harold McLean, Public Counsel, file this motion requesting the Prehearing Officer to (1) strike the depreciation study which Florida Power & Light Company (FPL) served on the parties on July 5, 2005, and (2) prohibit FPL from sponsoring or otherwise putting into evidence the depreciation study served on July 5, 2005. If the Prehearing Officer nevertheless allows FPL to sponsor this depreciation filing, Citizens request permission to file rebuttal testimony on August 15, 2005. In support of this motion Citizens state the following:

1. On March 17, 2005, FPL filed what it termed "comprehensive depreciation studies for production, transmission, distribution, and general plant functions."<sup>1</sup> All of the rates and proposals contained in the March 17, 2005 depreciation filing were

<sup>1</sup> Letter from H. Antonio Cuba to Blanca Bayo dated March 16, 2005.

incorporated into FPL's rate case filed five days later on March 22, 2005. In fact, Commission rule 25-6.0436(8)(c) requires a utility proposing new depreciation rates which coincide with the implementation of new rates requested in a rate case proceeding to submit the depreciation filing no later than the filing date of the minimum filing requirements. By filing its comprehensive depreciation study five days before filing its rate case, FPL complied with the requirements of this rule.

3. On March 29, 2005, OPC filed a motion which, among other things, requested the Commission to consolidate the storm cost recovery docket (Docket No. 041291-EI), the depreciation study docket (Docket No. 050188-EI), and the rate case docket (Docket No. 050045-EI). Commission order PSC-05-0499-PCO-EI issued May 9, 2005, granted the motion to consolidate the depreciation and rate case dockets, but denied the motion to consolidate the storm cost recovery docket with the depreciation docket and rate case docket. The order consolidated the depreciation docket and rate case docket for all purposes, including hearings set to begin on August 22, 2005.

4. On May 11, 2005, the Prehearing Officer issued order no. PSC-05-0518-PCO-EI, the first order revising the initial order establishing procedure. To ensure that FPL's depreciation study was supported in the record of the consolidated proceeding, the order required to FPL to supplement its testimony to sponsor the depreciation study. It required the testimony to be filed by May 17, 2005.

5. FPL complied with the order by filing supplemental direct testimony by K. Michael Davis on May 13, 2005. In addition to sponsoring the March 17, 2005 depreciation filing, the testimony filed by Mr. Davis contained the following question and answer:

"Q. Will the 2005 Study be updated?

A. Yes. FPL will update the 2005 Study to incorporate actual plant and reserve balances as of December 31, 2004, with these balances rolled forward to December 31, 2005. The updated filing will be made in June 2005. FPL does not expect the update to change the new depreciation rates appreciably, if at all."

6. Consistent with the first order revising the order establishing procedure, Citizens filed testimony on June 27, 2005. Citizens' testimony included detailed testimony addressing the comprehensive depreciation studies for production, transmission, distribution, and general plant functions filed by FPL on March 17, 2005.

7. Without seeking leave of the Commission or proposing any schedule or avenue for parties to address an "updated schedule," FPL unilaterally filed a new depreciation study on July 1, 2005. FPL didn't serve the parties with the new depreciation study until July 5, 2005, and OPC received the study from FPL on July 6, 2005. The testimony filed by Mr. Davis on May 13, 2005, had stated that the update they would make in June, 2005, would merely "incorporate actual plant and reserve balances as of December 31, 2004, with these balances rolled forward to December 31, 2005." No testimony accompanied the filing, and FPL did not file anything with the study which mapped or set forth each of the changes made to the March 17, 2005 filing.

8. The unauthorized depreciation study served on July 5, 2005, appears to have made considerably more changes to the March 17, 2005 filing than just updating balances. It appears that the new filing is chocked full of new assumptions and changed analyses, including changes in service lives, remaining lives and salvage values. The new filing results in what appears to be an increase of more than \$50 million per year in depreciation expense for FPL generating plants. This is hardly just an update in plant values with immaterial changes in depreciation expense; it is a new study and analyses filed in disregard of the Prehearing Officer's procedural orders and the due process rights of intervenors to respond.

9. The Prehearing Officer's procedural orders set forth a tight schedule for processing the case. The company is required to make its case in its initial filings, and by Commission rule the depreciation case must be filed no later than the date the company filed its MFR's. The company's depreciation filing dated March 17, 2005 met that requirement; the unauthorized, substitute filing does not. The procedural orders set forth a time period for intervenors to file testimony supporting their position, and Citizens met that requirement by filing testimony of eight witnesses on June 27, 2005. That was the last opportunity for intervenors to file testimony in response to FPL's case.

10. The procedural orders allow FPL to file rebuttal testimony on July 28, 2005. Rebuttal testimony, however, is not an opportunity for FPL to file a new case. Rebuttal testimony by the company should be limited to the company's response to

intervenor and staff testimony. It cannot file a new case, nor can it use rebuttal testimony to rebut its own case by discarding its original depreciation filing and replacing it with a changed filing.

11. The ability to engage in discovery over the new filing is severely limited. The procedural orders require all discovery to be completed by August 10, 2005. Since the company has thirty days to respond to interrogatories and requests for documents, the procedural orders in effect require all interrogatories and requests for documents to be served by July 11, 2005 -- just five days after Citizens received the substitute study. Citizens served limited discovery on July 8, 2005, and FPL's response to that discovery is due August 8, 2005. Responses to even that limited discovery, however, will not be adequate to fully evaluate the new depreciation filing.

12. The Commission should strike the unauthorized substitute depreciation filing made by FPL after intervenors filed testimony responding to FPL's March 17, 2005 filing. In addition, Citizens request the Prehearing Officer to enter an order prohibiting FPL from filing testimony on August 28, 2005, which would substitute its study served on July 5, 2005, for its original study. The procedural orders do not allow or contemplate such a filing; in fact, the procedural schedule allows no opportunity whatsoever for intervenors to respond to a new, substitute study with rebuttal testimony. FPL did not ask for leave to file a new study, and the Prehearing Officer should not grant permission to do so after the fact. Citizens conservatively estimate that we have expended well more than \$20,000 in state resources responding to FPL's

March 17, 2005 depreciation filing in accordance with procedural orders issued by the Prehearing Officer. Allowing FPL to unilaterally ignore the procedural orders and go forward with a new substitute study would tacitly give the Commission's stamp of approval to squandering state resources.

13. If the Prehearing Officer nevertheless allows FPL to go forward with a new substitute depreciation study, Citizens request permission to file rebuttal testimony on August 15, 2005. This would give Citizens a minimal amount of time to review the discovery responses due from FPL on August 8, 2005, and to formulate responsive testimony.

**WHEREFORE**, Citizens respectfully request the Prehearing Officer to enter an order striking the depreciation study which FPL served on the parties on July 5, 2005, and prohibiting FPL from sponsoring or otherwise putting into evidence the depreciation study served on July 5, 2005. If the Prehearing Officer declines to issue such an order, Citizens request leave of the Prehearing Officer to file rebuttal testimony on August 15, 2005.

Respectfully submitted,

s/ Charles J. Beck  
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DOCKET NOS. 050045-EI & 050188-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

Mail or hand-delivery to the following parties on this 21st day of July, 2005.

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