BROWARD COUNTY
FLORIDA

Office of Budget & Management Policy
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January 25, 1996

Ms. Beverlee S. DeMello, Director
Division of Consumer Affairs
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

960025-EI

Re: Broward County's Request for Order Requiring Florida Power & Light Company to Refund Monies

Dear Ms. DeMello:

Thank you for taking the time on November 30, 1995, to hear the issues presented by Broward County and the responses of Florida Power & Light Company in connection with Broward County's claim for refund.

Broward County is concerned with FPL's continued efforts to influence your recommendation outside of the informal conference that was held last year. I am informed that you invited both FPL and the County to submit additional information each may have concerning the issues. In this regard, your instructions were specifically that neither of us was to reargue the positions already addressed in the conference. FPL has not adhered to your wish in this regard. By letters dated December 7, 1995, and January 8, 1996, FPL has reargued its position and has incorrectly stated Broward County's position in contravention of your express desire. In light of these actions by FPL, Broward County is compelled to provide the attached brief response.

In addition, FPL states that it updated the chart attached to its January 8, 1996, letter to you, however, FPL neglected to include additional information favorable to the County's position even though such additional information is in FPL's possession.

Very truly yours.

John Canada (KD)

John Canada, Director
Budget & Management Policy

cc/att: Steve Romig, FPL
Carol Hartman, Budget & Management Policy

COUNTY'S RESPONSE TO
GENERAL SUMMARY

All Groups:

The following is the County's summary and point by point response to FPL's statement that there is no basis for the County's refund claim:

Summary

FPL apparently misunderstands the County's position regarding the charges for lights that were incorrectly billed to the County. The County's position is that it did not at any time request or authorize service, nor did the County authorize anyone else to request or authorize service in the County's name.

It is true the County believes the cities should have been and should be billed where there is a contract for the cities to pay energy charges, but those contracts are between the County and the cities. The contracts do not attempt to place any responsibility on FPL and the County is not suggesting that FPL should be responsible for terms of the contract. The County asserts, however, that it somehow was billed for energy charges when it never asked for the service, never received the service, and never should have been billed for the service. For the purpose of determining whether the County was billed without authorization, it is of little relevance that FPL should have billed the cities or someone else (other than the County). The County only cares that it was incorrectly billed.

Also, that FPL was not a party to the Traffic Illumination Agreements is not relevant to the County's contention that FPL incorrectly and improperly billed it for these lights. The Traffic Illumination Agreements are offered merely to show that the County never had a reason to ask for the service and did not benefit from the service. Clearly, there was no reason for the County to ask for the service since the cities were contractually obligated to provide the energy charges. Likewise, since the cities were obligated to pay for the service, there was no benefit to the County.

FPL states that the County's position is that the cities should have been billed for the street lights. The correct statement of the County's position is that the County seeks a refund for monies it paid on bills for service which the County never authorized and thus was incorrectly charged to it. The agreements the County has with the cities merely highlight the County's position that it did not and would not have authorized the service in its name (the County never had a reason to) because the cities agreed to be responsible. The County did not and would not have authorized its

contractor to establish service in the County's name for the same reason.

> **FPL's #1.** The County paid all bills for service to these lights and never expressed any issues or concerns to FPL regarding the billings of any lights. At any time, the County could have requested a review of the accounts, and FPL would have provided a detailed listing of the facilities and locations being billed, just as we did for the current County auditor. FPL cannot be held responsible today for the County's past failure to review street light billings.

County's response to FPL's #1. FPL's assertion that it cannot be held responsible today for the County's past failure to review the bills completely ignores the fact that FPL created the problem by instituting service in the County's name without the County's authorization. This is especially true when coupled with the fact that the bills the County received did not contain sufficient detail to allow the County to know what facilities and locations were being billed.

The County did not know that it was being incorrectly billed for services it did not request. FPL states that it would have provided a detailed listing of the facilities and locations being billed if the County had asked. The fact is, however, the County did not receive bills from FPL that revealed what the County was paying for and the County paid those bills in good faith, relying on the accuracy of FPL's billing in doing so. For FPL to now state that the County should be denied a refund when the County did nothing to create the incorrect billings and when the County did not benefit from the services that were provided is ludicrous.

FPL claims to be an innocent party regarding the incorrect billings to the County. If this is true, the County is equally innocent because the County was billed for services that it never requested. Between the County and FPL, FPL has more responsibility for the incorrect billings because FPL created the problem by incorrectly initiating service in the County's name. All the County did was pay the bills as they were received.

> **FPL's #2.** Although the monthly bills do not list specific light locations, they do reflect the number and type of lights being billed for each account. When new street lights are billed for the first time, this is reflected by an increase in the number of lights on the statement. In addition, FPL also provides notification to the customer of new lights being billed via Form 151. These two steps provide the customer with the information necessary to review the bills and then notify FPL if they have any questions. The County never notified FPL of any concerns when the billings commenced, thereby accepting

the accuracy and validity of the billings. If they were being billed for lights which they felt should be billed to a city, it should have been resolved immediately, rather than years later when records are generally unavailable.

County's response to FPL's #2. This position by FPL is essentially an argument of estoppel. FPL's premise is that the County failed to notify FPL of any concerns and this failure equals acceptance by the County of the accuracy and validity of the bills. It is basic to an estoppel argument that the person for whose benefit the estoppel is applied must be free from wrongdoing in the transaction. FPL is not free of wrongdoing in this situation. FPL was wrong in at least two instances. First, FPL established service in the County's name without authorization (the County never requested the service). Second, FPL billed the County for service that did not benefit the County and which was not delivered to the County (the service apparently benefitted various cities).

Moreover, the County has already indicated that it did not know it was being incorrectly billed. The reason the County did not know is because the bills did not include sufficient detail for the County know of the inappropriateness of the bills. Since the County did not know it was being billed incorrectly, it is unreasonable for FPL to expect the County to have notified FPL of concerns.

FPL's #3. Broward County states that these lights should have all been billed to various cities, but none of the cities had ever authorized FPL to bill them for the lights. When contacted by FPL as a result of this claim, all of the cities contacted stated that they were not responsible for any of the past billings. Some cities agreed to begin paying for the lights in the future in order to avoid disconnection of the lights, but several of the cities stated that they had no responsibility for the lights whatsoever, past, present or future. The fact that the cities did not direct FPL to establish billings in their names as well as their disclaimer of responsibility for past billings is in direct opposition to the County's claim that the cities should have been billed for these lights.

County's response to FPL's #3. A denial of responsibility by the cities does not automatically make the County responsible for the lights, nor does it indicate in anyway that the County initiated or established the service. The County never established service for the disputed lights in its name, nor did the County authorize anyone to establish service for such lights in the County's name. Therefore, the question of whether a city had or has responsibility for the lights is not relevant to the real issue of whether the County has or had responsibility for the lights nor is it relevant

to the question of whether the County ever established service for the lights.

> **FPL's #4**. Overall, there are no facts or records which indicate that FPL acted any way but properly in its billing of street lights. There are no facts or records to support the County's position that FPL should have billed the cities for these lights instead of the County. Rather, it appears that the County simply failed to properly manage its review and payment of bills for street lights, and also failed to properly communicate with the cities involved in cases where the County felt the cities should pay for energy charges.

County's response to FPL's #4. FPL incorrectly states that there are no facts or records that it acted improperly in billing the County for the disputed lights. Henry Cook, the director of the County's Engineering Division, stated at the informal conference that the County would not have had service in the County's name for street lights that a city had agreed to pay for under a contract. Mr. Cook also stated that a contractor has the responsibility to establish service in the contractor's name for any electric service which the contractor may need for installation of street lights and that the County has never authorized its contractors to establish service in the County's name.

It is true that the County asserts in some instances that a city should have been billed for services. This is borne out in part by the fact that some cities have readily accepted responsibility for future billings for some street lights. The real issue to be resolve in this dispute is whether the County was billed incorrectly and whether the County should receive a refund for payments made on the incorrect bills.

COUNTY'S RESPONSE TO
GENERAL SUMMARY

Group I: Traffic Illumination Agreements: Agreements between Broward County and various cities which state that the County will install, own and maintain the lights, and that the cities will pay for the energy charges. (FPL was not a party to any of these agreements.)

County's response. This group identifies instances of incorrect billings by FPL to the County where the County and various cities had entered into a contract which divided the construction, maintenance, ownership, and energy payment responsibilities between them.

FPL states that Broward County's position is that the cities should have been billed for these lights, based on the terms of the agreements.

County's response. The County never requested service for these lights and, therefore, had no responsibility to pay for the energy charges. The agreements are merely supporting evidence to demonstrate that the County did not have a reason to request service for the lights.

> **FPL's #1.** The County installed, owns and maintains these lights. FPL cannot bill a city for lights that are owned and maintained by the County unless that city specifically authorizes FPL to do so. For all of the items in Group I, no authorizations were received from the cities to bill them for the lights in question. In most instances, there is also no record that FPL was even notified of an agreement between the County and the cities.

County's response to FPL's #1. The County did not initiate the service and, therefore, should not have been billed by FPL. FPL claims that it cannot bill a city for lights that are owned and maintained by the County unless that city specifically authorizes FPL to do so, however, FPL has billed the County without the County's specific authorization to FPL to do so. Likewise, FPL claims that it never received authorizations from the cities to bill them for the lights in question, however, the same is true for the County. No authorizations were received from the County to bill the County for the lights in question. The existence of an agreement between the County and the cities has no relevance on how or why the disputed street lights were improperly billed to the County. The County's installation, ownership and maintenance of the lights, this also has nothing to do with who is to pay for the energy services to the lights because the owner is not always the person responsible to pay for the service. The person FPL must

hold responsible to pay for the service is the person who initiated the service in the County's name without authorization.

> **FPL's #2.** Broward County indicated that their contractors typically initiate service for lighting installations, of which those being disputed represent only a portion of the total jobs worked over the past 21 years. The County stated at the informal conference (November 30, 1995) that their contractors did not have authorization to request service in the County's name, and therefore the County should not be liable for the past billings already paid by them. However, the County has ratified this practice over the years by allowing its contractors to continue to apply for service without ever notifying FPL that their contractors did not have such authorization. The County cannot now selectively dispute the contractor's authority in certain instances, since this was the accepted practice for all street lights. Further, the County's contractors represented Broward County in all dealings with FPL related to these street light projects, and it was reasonable and logical to believe that the lights should be billed to the County when so requested by the contractors, especially since there were no instructions to the contrary from either Broward County or the cities. (In reviewing an example of the County's standard contract, FPL can find no reference which either allows or precludes the contractor from requesting service in the County's name).

County's response to FPL's #2. Broward County never stated that its contractors were authorized to initiate service for any street light project in the County's name or on the County's behalf. Instead, the County stated (by its Engineering Director) that its contractors were responsible for installation of lights, which must have included acquiring electric service necessary to complete the project. The County further stated that any electric service related to a project acquired by contractors would have been the contractor's responsibility and should have been acquired in the contractor's name with the contractor paying for such service. Moreover, the County stated that FPL had no reason or authority to establish an account in the County's name and bill the County for such service. At no time did the County ratify any practice by its contractors of establishing accounts in its name (if such was a practice) because the County did not have knowledge that such was occurring. Since the County had no knowledge of this practice, it was not possible for the County to notify FPL that its contractors did not have such authorization.

The County is not selectively disputing the contractors' authority. The contractors never had (and do not now have) authority to establish an account with FPL on behalf of the County. Allowing its contractors to do this has never been an accepted practice by

the County. In addition, contractors have never had general authority to represent the County in any other dealings with FPL related to street light projects. If such did occurred, it occurred without the County's knowledge and since the County did not know that the contractor and FPL were establishing accounts in the County's name, it was not possible for the County to give contrary instructions to FPL.

> **FPL's #3.** When this street light issue was initially raised by Broward County, FPL recommended that the County contact the cities in order to resolve the issue of billing responsibility, since the Traffic Illumination Agreements are contracts between the County and the cities, and FPL is not a party to any of the agreements. To our knowledge, Broward County has not contacted any of the cities involved to discuss this matter. As a result, FPL has contacted many of the cities, and none had ever previously notified FPL to bill them (the cities) for the lights.

County's response to FPL's #3. The County did not contact the cities in an attempt to resolve FPL's unauthorized billing of the County. It would have been absurd for the County to ask the cities to accept responsibility for FPL's unauthorized past billings to the County and, as FPL discovered, the cities' negative responses should have been anticipated. Why should the County have asked the cities to pay for FPL's mistake? FPL makes an issue of its claim that it received no notification from the cities to bill them but FPL completely ignores the fact that it also did not receive any notification from the County to bill it either.

> **FPL's #4.** The terminology used in the Traffic Illumination Agreements does not specify that the energy bills for street lights would be placed in the city's name. It only states that the city would be responsible for energy charges, which could be interpreted to mean that the city would reimburse the County for the energy charges after the County paid the bill. Therefore, even where FPL may have been aware of an agreement, this alone would not justify putting the billing in the cities names without their authorization.

County's response to FPL's #4. The terminology used in the Traffic Illumination Agreements is not relevant to the key question for determination of "Why did FPL bill the County for street lights that the County had no responsibility to pay for and who authorized an account in the County's name?" The County presented the Traffic Illumination Agreements only for the purpose of showing that the County had no reason to establish service in its name for these lights. At no time should there have been an account in the County's name; not during installation and, in light of the agreements with the cities, at no time thereafter. The County

absolutely agrees that FPL should not have initiated billings in the names of cities without the cities' authorization. The problem is that FPL should have applied the same reasoning to the County and should not have initiated billing in the name of the County without the County's authorization.

COUNTY'S RESPONSE TO
GENERAL SUMMARY

GROUP II: "Not County Initiated Projects": Lights for which Broward County states there is no evidence that the County initiated service to the lights.

FPL states that Broward County's position is that these are not County initiated projects, and there is no evidence that the County initiated service to these lights.

County's response. The County did not install these lights and did not request service to these lights.

FPL's position is as follows:

> **FPL's #1.** The County has been unable to find records in its files to confirm that they requested service to these lights, and has therefore claimed that they did not request such service. However, just because the County could not find records of such requests does not mean a request was not made by the County or its contractors. While these installations are generally very old (up to 21 years) and records are typically unavailable, FPL was able to find documentation for three of these items which show that the lights were indeed specifically requested by Broward County. (The County has subsequently dropped these three items from their claim). In another case, the County's contractor requested service to the lights. In other instances, the lights are maintained by the County, and in one case owned by the County.

County's response to FPL's #1. These are not County projects and the County had no involvement in the installation of these lights. Since the County did not install the lights, it is logical to assume that the County did not request service to these lights. Yet, the County was billed for the service to these lights. The County cannot offer a reason for the billings to the County and neither can FPL.

> **FPL's #2.** If the County was of the opinion that the billings should not have been established in the County's name, then they should have raised a question or concern upon initial receipt of the bills. The issue could have been easily resolved at the time. However, they paid the initial bills and all subsequent ones, thereby accepting the billings as accurate and valid. It is unfair and inappropriate to question these bills at this time when neither party has adequate records due [to] the age of these accounts (most of these were established in the 70's and early 80's). In addition, all of the cities contacted in this group stated that they were not

responsible for the past billings of these lights, which is in direct opposition to the County's claim that the cities should have been billed since the time of installation.

County's response to FPL's #2. The County agrees that the issues could have been resolved easily at the time billings were first received. The problem, however, is that the County could not have readily determined that the bills from FPL were unauthorized and that it needed to question or raise a concern regarding the bills. The bills did not provide sufficient detail to inform the County of what was being paid for regarding each bill. The County paid the bills in good faith. Having paid the bills in good faith, there is nothing unfair or inappropriate on the County's part in questioning these bills at this time. The County hired an independent auditor who discovered these issues and, upon such discovery, the County is now pursuing the concerns. The response of the cities that they are not responsible for past billings is no surprise and could have been anticipated.

COUNTY'S RESPONSE TO
GENERAL SUMMARY

GROUP III: Annexations: Streetlight for which Broward County was previously responsible and which are in areas subsequently annexed by various cities.

FPL states that Broward County's position is that the billing for the lights should have been changed to the cities when the areas were annexed. (The County does not dispute that they own, and maintain the lights, and they do not dispute billing responsibility prior to the annexations).

County's response. Annexation is a municipal service which is an expense of the municipalities (cities). Upon annexation, the annexing city should have been responsible for payment of these expenses.

> **FPL's #1.** FPL was never notified by either the County or any of the cities to change billing for the lights as a result of annexation. All of the lights, except for item E-4-A, are owned and maintained by Broward County. If the County wanted the cities to take over responsibility for County owned lights when the areas were annexed, the County should have requested the cities to authorize FPL to bill them for the lights. FPL cannot change the billings of these County owned lights into the cities names without authorization from the cities, and the fact that an annexation occurred has no bearing on billing responsibility and is not by itself justification to change the billing.

County's response to FPL's #1. Street lights are a municipal service which the County provides in its areas that are not within city municipal boundaries. Upon annexation, the provision of municipal services, including street lights, becomes the obligation of cities. The County did not notify FPL to change the billing to the cities because the County was not authorized to act on behalf of the cities to change billings to the cities' names.

> **FPL's #2.** Item E-4-A includes FPL owned and installed lights. The area in question was annexed by the city on January 1, 1991. However, the Broward County Director of Traffic Engineering requested the installation of these lights in writing on February 13, 1991, six weeks after the date of annexation.

County's response to FPL's #2. The County cannot explain the request from its Traffic Engineering Director after the annexation. The County believes that this request should not have been made.

FPL's #3. In addition to the street lights, Broward County also pays for traffic signals in annexed areas. Just as with street lights, these are customer owned facilities, and there is no reason for FPL to arbitrarily change billing responsibility without appropriate authorization from the cities. The County never informed FPL of any desired billing changes at the time, nor did they notify the cities to contact FPL with necessary authorizations.

County's response to FPL's #3. The County's payment for traffic signal devices within the cities is irrelevant to the issues here. The County installs and pays for energy service to all traffic signal devices within Broward County by agreement with the cities. This is done so that all traffic signal lights within the county can be cinchonized.

3/7 137

State of Florida

Public Service Commission

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

DATE: March 5, 1996

TO: Blanca Bayo, Director, Division of Records and Reporting

FROM: Bev DeMello, Director, Division of Consumer Affairs (BSM)

RE: Complaint of Broward County against Florida Power & Light

Please distribute the following correspondence (two letters from Florida Power & Light Company--December 7, 1995 and January 8, 1996; and one letter from Broward County on January 25, 1996) that should be included as documents presented by PSC staff to those individuals listed on the docket, No. 960025-EI.

Let me know if you need additional information. Thank you.

ACK ____
AFA ____
APP ____
CAF 1
CMU ____
CTR ____
EAG 1
LEG 1
LIN ____
OPC ____
RCH ____
SEC 1
WAS ____
OTH ____

FPL (12/7/95)
DOCUMENT NUMBER-DATE
02750 MAR-6 96
FPSC-RECORDS/REPORTING

FPL (1/8/96)
DOCUMENT NUMBER-DATE
02749 MAR-6 96
FPSC-RECORDS/REPORTING

Broward County
DOCUMENT NUMBER-DATE
02751 MAR-6 96
FPSC-RECORDS/REPORTING