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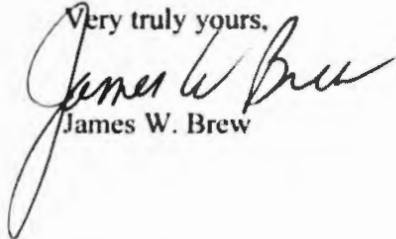
Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

Re: Docket No. 971608-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket please find an original and fifteen (15) copies of the AmeriSteel's Response To Florida Power & Light Company's Motion In Opposition To AmeriSteel's Petition For A Limited Proceeding.

Very truly yours,



James W. Brew

ACK _____ Enclosure

AFA _____

AFP _____ cc: All Parties of Record

CAF _____

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FPSC-RECORDS/REPORTING

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OP

**STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

In re: Petition of AmeriSteel Corporation)
for Limited Proceeding to Reduce Florida) Docket No. 971608-EI
Power & Light Company's Annual)
Revenues by \$440 Million)
_____)

**RESPONSE TO FLORIDA POWER & LIGHT COMPANY'S
MOTION IN OPPOSITION TO AMERISTEEL'S PETITION
FOR A LIMITED PROCEEDING**

INTRODUCTION

AmeriSteel Corporation ("AmeriSteel") hereby files its Response to Florida Power & Light Company's ("FPL" or the "Company") Motion in Opposition to AmeriSteel's December 11, 1997, Petition for a Limited Proceeding To Reduce FPL's Annual Revenues and For An Expedited Hearing. FPL's motion should be denied. AmeriSteel's petition plainly states the relief sought and the discrete issues that warrant an immediate rate reduction for all FPL customers. FPL's Motion asks that the petition be denied outright, but the Company offers no basis for its request. The Company does not challenge the jurisdictional basis for the limited proceeding AmeriSteel requests or AmeriSteel's substantial interests. The Company simply objects generally without actually confronting the essential factual issues raised in AmeriSteel's petition. This merely verifies AmeriSteel's request for an expedited hearing schedule in this matter. In all other respects, FPL's Motion offers irrelevant commentary and statistical trivia that are not germane to the matters raised by AmeriSteel's petition.

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FPSC-RECORDS/REPORTING

A. "Placed in Context" FPL's Current Rates Should Be Reduced

FPL maintains that its base rates are reasonable when "placed in context" of the circumstances that have transpired since 1985, the year FPL last received a base rate increase. None of the historic statistics FPL references at pages 3-4 of its motion, however, address the question posed in AmeriSteel's petition, *i.e.*, whether FPL's current rate levels are excessive compared to its current cost of service.

For example, FPL cites significant reductions in O&M expenses "despite its growth in plant" to illustrate the actions the Company has taken to control its costs since 1985 (Motion, p. 3). During the course of proceedings in Docket No. 970410-EI, the Company regularly made similar claims that it has taken steps in recent years to improve productivity and streamline costs. AmeriSteel has never disputed these claims, but simply notes that these cost savings have not been reflected in appropriate adjustments to FPL's base rates. The reality of this situation is that FPL's costs per kWh of serving a growing customer base have been declining steadily but its base rate charges per kWh have remained unchanged. Most elements of FPL's revenue requirements have changed since 1985, and the overall effect of these changes are reflected in FPL's earned return on equity. Thus, as described in AmeriSteel's petition, the relevant questions to assess in determining if current rate levels are excessive are:

- 1) What is a reasonable allowed return on equity for FPL under current market conditions?
- 2) Are FPL's earnings expected to exceed a current reasonable allowed return on equity?

B. A Current Reasonable Return on Equity for FPL is 9.5%

As FPL's acknowledges in its motion, the Commission has superseded the allowed return on equity set for FPL in 1985 several times, including adjustments in limited proceedings and negotiated settlements.¹ And, as noted in AmeriSteel's petition (Petition at p. 6) and referenced in FPL's motion, the Commission last reduced FPL's return on equity in 1993.² With a return on equity target that is nearly five years old and current Commission Staff analyses showing a reasonable cost of equity for FPL more than 250 basis points below the currently authorized mid point of 12%, AmeriSteel's petition for a limited proceeding to establish an updated allowed return on equity is both timely and necessary.

FPL's discussion of its historical allowed and earned returns on equity studiously avoids addressing a current reasonable cost of equity or the facts presented in AmeriSteel's petition. Attachment B to AmeriSteel's petition is an August 18, 1997, Staff Quarterly Report on Equity Cost Rates that strongly supports AmeriSteel's recommended allowed return of 9.5%. FPL makes absolutely no effort in its Motion to address the Staff Quarterly Report on Equity Cost Rates. On December 17, 1997, Staff released its most recent Quarterly Report (*see attached*). This report calculates, as AmeriSteel's petition predicted,³ that FPL's required cost of equity has declined further under each of the methods Staff considers. Both the Discounted Cash Flow (9.4%) and Ex Ante Risk Premium (9.3%) methods, the two approaches most commonly employed by regulatory commissions, show an indicated cost of equity for FPL that is lower than

¹ See FPL Motion, p. 6.

² Order No. PSC-93-1024-FOF-EI; *see* FPL Motion, p. 6.

³ *See* AmeriSteel Petition, p. 8.

the 9.5% AmeriSteel recommends. Thus, AmeriSteel's petition is timely, appropriate and well founded.

FPL finds it "offensive" that a customer has requested a reduction of its return on equity.⁴ As described in AmeriSteel's Petition, however, the Florida Statutes expressly provide that customers may initiate such appropriate claims for rate relief (AmeriSteel Petition, pp. 4-5). There is no question as to the substantial interest of all FPL customers, including AmeriSteel, in these matters, and AmeriSteel's Petition in no way disrupts the Commission's on-going monitoring of utilities. FPL's Motion does not attempt to show that it's currently authorized return is reasonable today. AmeriSteel's petition identifies a serious disparity between FPL's allowed return and a current reasonable return that should be addressed in a limited proceeding.

C. AmeriSteel's Petition Is Appropriate

On several occasions during the course of Docket No. 970140-EI, and Docket No. 950307-EU, Commissioners and Commission Staff have suggested that AmeriSteel's concerns regarding the cost of electricity provided by FPL should be addressed in a rate proceeding rather than in accounting-related dockets or other matters. The relief AmeriSteel seeks in the Petition for a Limited Proceeding goes directly to that point. The Petition precisely identifies the issues

⁴ FPL misrepresents AmeriSteel's petition with respect to FPL's rapidly expanding equity ratio. Contrary to FPL's allegations, there is no error in AmeriSteel's petition regarding FPL's equity ratio. As is common in the utility industry, equity ratios are reported as a percentage of investor capital. As shown on Attachment C to AmeriSteel's petition, FPL's equity ratio as a percent of investor capital is extremely high and is markedly higher than that of its parent, FPL Group, Inc.

The weighted cost of equity capital used in monitoring FPL's earnings is the product of FPL's equity ratio and its allowed return on equity. FPL's equity ratio as a percent of investor capital has increased from 42.3% in FPL's last rate case to 61.56% today. This very high equity ratio in combination with FPL's excessive and outdated allowed return on equity results in excessive rates for all FPL's customers. FPL's misleading attempt to deflect attention from its actual equity ratio should be disregarded. The Commission needs to analyze thoroughly the reasonableness of FPL's weighted cost of equity capital.

to be addressed and the reasons why they should be addressed so that the Commission can conduct a focused and expedited proceeding. The Petition cannot be remotely construed as over-broad, a "fishing expedition," or overly burdensome on FPL. It seeks relief equally for all customers of FPL. Moreover, while AmeriSteel has intervened in prior FPL-related dockets, it has not previously initiated a proceeding before this Commission regarding the rates and charges of FPL.

Thus, neither the filing of a petition nor the substance of AmeriSteel's petition are an abuse of the Commission's procedures as FPL claims. As the Commission and its Staff know well from long experience in such matters, utilities complain the loudest when petitions strike at or near the mark. FPL's feigned indignation at the temerity of any customer to seek needed and overdue rate reductions that will benefit all customers does not disguise the Company's failure to address the merits of AmeriSteel's petition.

FPL asserts that the timing of AmeriSteel's petition constitutes an abuse of process because it was filed prior to the Commission's deliberations in Docket No. 970410-EI. (FPL Motion, p. 5). By the time AmeriSteel's petition was filed on December 11, 1997, however, Staff's Recommendation in Docket No. 970410-EI was complete. The recommendation memo for the December 16 agenda conference makes no reference to the filing of this petition and there is no indication that the filing of the petition had any bearing on the pending matters.

D. The Commission Needs To Consider The Effect Of The Expenses Addressed In Docket No. 950359-EI and 970410-EI In Determining the Level Of Required FPL Rate Reductions

The Preliminary Agency Action in Docket No. 970410-EI stated:

This Plan neither precludes an earnings review nor a review of the plan during the context of a proceeding to reset base rates.

Order No. PSC-97-0499-FOF-EI, issued April 29, 1997, p. 2. In addressing the intent of this provision at its Agenda Conference held on July 15, 1997, (concerning FPL's Motion to Dismiss AmeriSteel's Protest in that docket), the following exchange occurred between Commissioner Clark and FPL counsel Matthew Childs:

COMMISSIONER CLARK: Yes, but pretty soon things add up. I mean, I guess what I'm saying is if at later time they want to say it was improper to extend this recovery, and, therefore, you should not consider it when setting your rates, is your response going to be you should have challenged it then? It's *res judicata*.

MR. CHILDS: Well, your order says that your decision here is not *res judicata*, and my argument to you -- it is not *res judicata* on the issue, and my argument to you, however, is that a customer should not -- or anyone -- should not have the right to sort of position themselves today about an argument that they may make in the future.⁵

* * * *

COMMISSIONER CLARK: Well, getting back to my question. What if in a future case, what if next year you come in and you file a rate case and you include the plan on -- recovery expenses according to the plan.

MR. CHILDS: Yes.

COMMISSIONER CLARK: Can they challenge it then?

⁵ Agenda Conference Transcript, Docket No. 970410.EI, July 15, 1997, p. 15.

MR. CHILDS: Your order already says, Commissioner -- I'm looking for it. Your order already says, in effect, that the decision here is not binding in a rate proceeding, the plan is not binding and a matter can be addressed. This does not affect rates. And, in addition, it says if you have a rate proceeding it can be brought up. Yet they come back and argue that they want to do it now.

COMMISSIONER CLARK: Mr. Childs, could you read me that language?

MR. CHILDS: If I can find it.

COMMISSIONER CLARK: Well --

MR. CHILDS : I will find it.

COMMISSIONER CLARK: Ms. Salak --

MR. CHILDS: Can I move on and --

COMMISSIONER CLARK: Staff may have it.

MR CHILDS: "This plan --" Page 3 -- "neither precludes an earnings review nor a review of the plan during the context of a proceeding to reset base rates." I mean --

COMMISSIONER CLARK: Okay.⁶

As Commissioner Clark correctly perceived in July, FPL now argues, notwithstanding Mr. Childs' statement, that *res judicata* bars further Commission consideration of the expenses covered in Docket No. 970410-EI in a rate context where that level of expense has a bearing on the level of FPL overearnings and rate reductions that may be required. As the discussion noted above shows, FPL's expected about-face on this point must be rejected.

⁶ *Id.* pp. 20-21.

Moreover, if there were any remaining uncertainty on this matter, the Public Counsel informed the Commission at its agenda conference held on December 16, 1997, prior to its deliberation on the matters in Docket No. 970410-EI, that his office had relied upon the above quoted sentence in the PAA. Mr. Shreve explained that his office had decided not to intervene in that docket based on the belief that the referenced sentence assured him of an opportunity to challenge the expenses covered by that plan in any subsequent rate related proceedings. At the Agenda Conference, Commissioner Clark agreed with the Public Counsel and observed that "a serious due process problem" would arise if the sentence were not included in the Commission's final order in that docket. On its own motion, the Commission directed the sentence be incorporated in its final order.

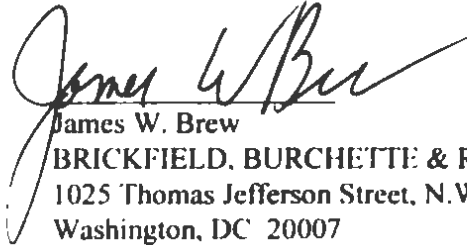
In short, the Commission intended and expressly stated from the very beginning of Docket No. 970410-EI that the expense recovery contemplated in that docket could be re-examined in subsequent earnings and rate proceedings. The point was discussed at length in that docket, **FPL agreed that *res judicata* would not be applied to preclude a reassessment of those expense levels in such subsequent rate or earnings proceedings**, and the Commission emphatically reinforced that point at its December 16 Agenda Conference. AmeriSteel's Petition properly preserves that issue for consideration in the instant docket. FPL's predicted reversal of its previously stated position on this matter must be rejected.

CONCLUSION

For the reasons stated herein AmeriSteel urges the Commission to deny FPL's Motion in Opposition and requests that an expedited hearing schedule be established in this matter. The Commission should determine that AmeriSteel's petition is timely and proper, that a reasonable

allowed return on equity for FPL should not exceed 9.5% and that FPL's rates should be reduced as requested in AmeriSteel's December 11, 1997 petition.

Respectfully submitted,



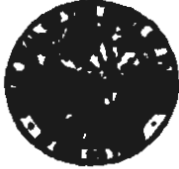
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December 24, 1997

State of Florida



Public Service Commission

-MEMORANDUM-

DATE: DECEMBER 17, 1997
TO: RICK WRIGHT, ACCOUNTING-COMMUNICATIONS, AFAD
JOHN SLEMKEWICZ, ACCOUNTING-ELECTRIC & GAS, AFAD
FROM: SONJA JONES, FINANCE SECTION, AFAD
RE: QUARTERLY REPORT ON EQUITY COST RATES

Spurred by consumers' biggest spending spree in five years, the economy posted vigorous growth in the third quarter while inflation remained low. The third quarter seasonally adjusted annual growth rate in the gross domestic product (GDP) — the sum of all goods and services produced within U.S. borders — matched the second quarter's pace at a 3.3% annual rate. Inflation has consistently improved over the year. A price measure linked to GDP inched up at a 1.5% annual rate, the smallest increase in five years. This year's stellar economic growth has pushed the nation's unemployment rate to a 24-year low of 4.8%. Furthermore, workplace productivity jumped to a 4.5% annual rate in the third quarter, following a strong second-quarter gain. The composite index of leading indicators rose for the fifth straight month in September, suggesting the economy will continue to grow. Analysts believe the stock market's recent sharp decline — eliminating part of consumers' wealth — should help slow growth next year to a rate monetary policy makers view as more sustainable.

Economists believe growth will moderate to around 2.4% next year as labor shortages constrain production and financial turmoil in Asia cuts into U.S. export sales. However, economic forecasts show that the U.S. economy is expected to weather the Asian financial crisis with steady growth and low inflation. Stephen Roach, chief economist at Morgan Stanley Dean Witter, writes, "The tug of war between Asia and the rest of the world looms as the most important theme for the global economic and financial outlook in 1998." The U.S. economy remains surprisingly strong. Even so, a strong dollar will make it harder for U.S. companies to export to Asia, especially given the weakened state of many Asian economies. Even if U.S. imports increase sharply and U.S. exports turn sluggish, few observers believe that the Asian plight will derail America's economic expansion. James Griffin, investment strategist at the Aetna Investment Management unit of Aetna Inc., says, "The U.S., with [its] huge domestic demand, can absorb these shocks and feed back a growth impulse" to Asia's faltering economies. A similar conclusion was reached by the National Association of Business Economists. In its latest quarterly survey, the National Association of Business Economists concluded that the burgeoning crisis "will probably not have a significant impact" on prospects for U.S. expansion in the next five years and that moderate growth and low inflation are "likely to continue" at least through 2003.

cc: Tim Devlin
Beth Selak
Ann Causseaux
Dele Mailhot

COST OF EQUITY ANALYSIS (1)

	BOND RATING	DISCOUNTED CASH FLOW	EX ANTE RISK PREMIUM	PROSPECTIVE CAPM
ELECTRIC UTILITIES				
Florida Power Corporation	Aa3/AA-	9.4	9.3	10.6
Florida Power and Light	Aa3/AA-	9.4	9.3	10.6
Florida Public Utilities Company		9.9	9.7	11.1
Gulf Power Company	A1/A+	9.5	9.3	10.7
Tampa Electric Company	Aa2/AA	9.4	9.2	10.6
TELEPHONE UTILITIES				
Central Telephone of Florida	Baa1/A	14.7	11.6	12.4
GTE Florida, Inc.	A1/AA-	14.5	11.4	12.1
Southern Bell Telephone	Aaa/AAA	14.2	11.1	11.8
United Telephone of Florida	A1/A	14.5	11.5	12.2
Other Telephone Utilities		14.9	11.8	12.5
NATURAL GAS UTILITIES		10.4	9.8	10.9

WATER AND WASTEWATER UTILITIES

The cost of equity obtained using the current leverage formula is 9.21% at 100% equity and 10.46% at an equity ratio of 40% or lower. The current leverage formula is

$$RCE = 8.32 + (0.832/ER)$$

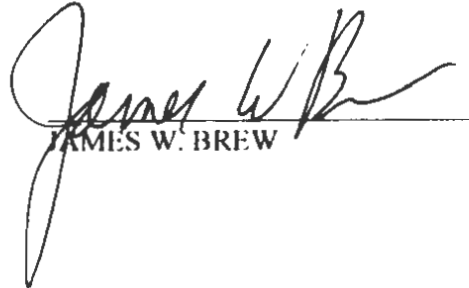
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of AmeriSteel's Response To Florida Power & Light Company's Motion In Opposition To AmeriSteel's Petition For A Limited Proceeding has been furnished via U.S. mail, postage prepaid, this 24th day of December 1997, to the following:

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