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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

AUG 26 PM 1:02

In Re: Adoption of Numeric Conservation Goal
Florida Power & Light Company
Florida Power Corporation
Gulf Power Company
Tampa Electric Company

RECORDS AND REPORTING
Docket No. 971004-EG
Docket No. 971005-EG
Docket No. 971006-EG
Docket No. 971007-EG

7
Filed: August 26, 1998

LEAF'S RESPONSE IN OPPOSITION
TO FPL'S MOTION TO STRIKE LEAF'S REPLY

The Legal Environmental Assistance Foundation, Inc., ("LEAF") files this Response in Opposition to FPL's Motion to Strike LEAF's Reply and states:

1. It is within the Commission's discretion, as the presiding officer in this proceeding, to allow LEAF's Reply. The Uniform Rules in 28-106, F.A.C., (as did the Commission's prior procedural rules in 25-22, F.A.C.) contain no provision prohibiting a Reply. Instead, they give the presiding officer broad discretion to "conduct such proceedings and *issue such orders as are deemed necessary* to dispose of the issues raised" by LEAF's Motion For Procedural Order. Rule 28.106.204, F.A.C. (emphasis added). The rules also give the Commission broad discretion to "issue *any orders necessary* to effectuate discovery, to prevent delay, and to promote the just,

ACK _____ speedy, and inexpensive determination of all aspects of the case, including bifurcation of the
AFA _____
APP _____ proceeding. Rule 28-106.211, F.A.C. (emphasis added). Case law also establishes that the
CAF _____ presiding officer has broad discretion in addressing the procedural matters that are at issue here.
CMU _____
CTR _____ Sunrise Community v. Florida Department of Health and Rehabilitative Services, 14 F.A.L.R. 5162,
EAG _____ 5163 (1992); 1000 Friends of Florida v. City of Daytona Beach, 16 F.A.L.R. 2428, 2430 (1994)
LEG _____ 1
LIN _____ 5 (relying on Rule 60Q-2.031, F.A.C., predecessor and virtually identical to Rule 28-106.211, F.A.C.);
OPC _____
RCH _____
SEC _____ 1
WAS _____
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DOCUMENT NUMBER-DATE

09295 AUG 26 98

RECORDS AND REPORTING

1 to each dkt

In re: Application for transfer of facilities of Lake Utilities, Ltd., to Southern States Utilities, Inc., 95 FPSC 1:279, 281, Order No. PSC -95-0062-FOF-WS; In re: In re: Dade County Circuit Court Referral of Certain issues in Case No. 94-14234-CA-22 (S.H.Dohan & Co., vs. Transcall America, Inc., d/b/a ATC Long Distance) that are within the Commission's jurisdiction, 97 FPSC 5:320, 321, Order No. PSC-97-0554-FOF-TI; and Florida Department of Environmental Protection v. Brotherton 20 F.A.L.R. 82 (1997).

2. The Commission should exercise its discretion to allow LEAF's Reply because:

a. **LEAF's Reply is a necessary addition that will help the Commission make an informed decision.** A Reply is appropriate when, as in this instance, it is "necessary," or "necessary to make an informed decision," or when it adds something "new to the original pleadings". Cf., Order No. PSC-92-0205-FOF-WS¹ and Order No. PSC-96-0240-PCO-WS². The pivotal, complex issues now at stake make LEAF's Reply especially necessary in this instance. Before the Commission is one of the proceeding's most consequential, complex, and controversial matters - - the issue of how the Commission will identify which energy and demand savings measures merit cost-effectiveness evaluation when setting goals. Further, LEAF's Reply is helpful in making an informed decision since, as is clear from the face of the pleadings, LEAF's Reply helps delineate and clarify

¹In re: Application for a rate increase in Brevard County by General Development Utilities, Inc., Issued April 14, 1992, 92 FPSC 4:306 (though the Commission disallowed the reply in this case, nonetheless, its ruling made clear that the party filing the reply had the relief sought by the reply).

²In re: Application for a rate increase and increase in service availability charges for Southern States Utilities, Inc., issued February 19, 1996, 96 FPSC 2:444 (though the Commission disallowed the reply in this case, nonetheless, it granted the relief sought by the reply).

obscurable matters at issue. Also, because it responds to issues first raised in utility responses³, LEAF's Reply adds new matters to the original pleadings. Allowing LEAF's Reply would help clarify matters at issue, place relevant argument before the Commission, and ensure that utility allegations do not remain completely untested. LEAF's Reply is a necessary and helpful addition in this case.

b. **Due process requires allowing LEAF's Reply.** Not allowing LEAF to reply to allegations first raised in utility responses⁴ would deny LEAF an opportunity to be heard. Such denial would conflict with traditional notions of due process.

c. **LEAF's Reply helps secure the just, speedy and inexpensive determination of this proceeding.** Rule 28-106.101, F.A.C. directs that the Uniform Rules (including Rule 28-106.204, F.A.C.) "shall be construed to secure the just, speedy and inexpensive determination of" this proceeding." As 2a and 2b above explain, LEAF's Reply both helps to delineate and clarify complex, obscured issues and provides a fair opportunity to present LEAF's response to allegations first raised in utility Responses. Allowing LEAF's Reply would thus help secure the just, speedy and inexpensive determination of this proceeding.

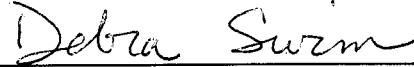
WHEREFORE, the Legal Environmental Assistance Foundation, Inc., respectfully requests that the Commission deny Florida Power & Light's Motion to Strike LEAF's Reply

³For example, in response to FPL's newly stated approach to run TRC tests on measures which previously failed RIM, LEAF's Reply explains how this approach would still keep the Commission from knowing whether measures which passed TRC in the last case would pass TRC under current conditions.

⁴See Footnote 3.

to Utility Responses.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of LEAF's Reply in Opposition to FPL's Motion to Strike LEAF's Reply were hand delivered (when indicated by *) or mailed this 26th day of August, 1998 to the following:

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