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October 8, 1999

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

In re: Generic investigation into the aggregate electric utility reserve
margins planned for Peninsular Florida
Docket No. 981890-EU

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Florida Power Corporation's Response to The Florida Industrial Power Users Group's Motion to Compel Florida Power Corporation to Respond to Discovery.

I also provided a disc of these documents for your convenience.

We request you acknowledge receipt and filing of the above by stamping the additional copy of this letter and returning it to me in the self-addressed, stamped envelope provided.

If you or your Staff have any questions regarding this filing, please contact me at (727) 821-7000.

Very truly yours,

Gary L. Sasso
Gary L. Sasso

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APP _____
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EAG 11/12/99 Enclosures
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[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P.A.

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RESPONSE IN SUPPORT OF FPC'S GENERAL OBJECTIONS

Contrary to FIPUG's inflammatory accusations of "delaying tactics," FPC was well within its rights when it objected to the nature of FIPUG's discovery. FPC must safeguard its constitutional, statutory, and regulatory rights by reiterating its objections to the nature of these proceedings as an improper "mix" of an agency investigative proceeding and a formal evidentiary hearing wherein the agency intends to adjudicate issues affecting certain parties' substantial interests. Section 120.57(5), Florida Statutes (1999), and Uniform Rule of Procedure 28-106.101 expressly prohibit this type of "mixed" proceeding. While the Commission is statutorily entitled to engage in certain proceedings, it cannot fashion those proceedings in any way it sees fit, especially when such proceedings conflict with the procedures set out in the Florida Administrative Procedure Act and the Uniform Rules of Procedure promulgated by the Administration Commission. FPC continues to assert that the Commission's application of Rule 25-22.036 in the instant proceeding impermissibly conflicts with the Uniform Rule of Procedure 28-106.201.

Although FIPUG seeks to obfuscate FPC's arguments, FPC does not, and has never intended to, challenge the Commission's ability to conduct its own discovery, issue its own subpoenas, and compel witnesses pursuant to a Commission investigation. See §350.123, Fla. Stat. (1999). The Commission has the statutory authority to maintain grid reliability and to conduct proceedings designed to effectuate that purpose. See §366.04(5), Fla. Stat. (1999). The Commission issued its own discovery to the utilities in the instant proceeding, and FPC has answered that discovery.

It is clear, however, that the Commission's investigative proceedings, preliminary to agency action, should not be fashioned as section 120.57 adjudicative proceedings and should not grant other parties (who are not targets of the Commission's scrutiny) the right to take discovery. See §120.57(5), Fla. Stat. (1999); Fla. Admin. Code R. 28-106.101; Fla. Admin. Code R. 28-106.206. It is FPC's position that the Commission has not lawfully initiated a section 120.57 proceeding to determine the substantial interests of any party. See Fla. Admin. Code R. 28-106.201. Once a section 120.57 proceeding has "commenced," each party has the power to obtain discovery and seek out documents and other information with which to defend themselves in the adjudicative proceeding. See Fla. Admin. Code R. 28-106.206. But discovery pursuant to Rule 28-106.206, Uniform Rules of Procedure, is simply not available in the context of an agency investigation. See Fla. Admin. Code R. 28-106.201. While the Commission may have the inherent statutory ability to pursue discovery in an investigative proceeding, FIPUG does not have a similar independent basis for its discovery.

Significantly, neither the pre-hearing officer nor the Commission has had any occasion to date to rule that third parties like FIPUG would be able to use the Commission's investigation as an opportunity to obtain discovery from the utilities, especially when such discovery is more pertinent to the third parties' self-interested goals than the issues under consideration by the Commission. FIPUG is not subject to the Commission's adjudicative power in this proceeding. Therefore, while FIPUG may have been given the title of "intervenor" by the Commission, it is really nothing more than a bystander to the Commission's investigation. If FIPUG is allowed to compel discovery responses from FPC, it would negatively affect FPC's ability to defend itself from an adverse adjudication in the instant proceeding.

FIPUG is an industrial power consumer group chiefly concerned with protecting its consumers' interests. While protection of its consumers is a laudable goal, FIPUG should not be allowed to use discovery in the instant proceeding as a "fishing expedition" to gather information and data to assist it in contract negotiations or posturing with FPC and other utilities. FIPUG's consumers' interests will not be "substantially affected" by this adjudicative proceeding any more than any other electrical customer in Florida.

While FPC does not believe that FIPUG is a proper intervenor to this proceeding, the Commission has given FIPUG that status. The Commission has also stated that the instant proceeding is governed by the Uniform Rules of Procedure. Uniform Rule 28-106.205 specifically states: "[t]he presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties." Fla. Admin. Code R. 28-106.205. Since the Commission has given FIPUG intervenor status pursuant to the Uniform Rules of Procedure, the Commission should make clear, by instituting the proper terms and conditions, that FIPUG does not have the power to pursue its Motion to Compel.¹ FPC has already produced the material requested by the Commission's Staff. It would be unduly burdensome and unhelpful to the Commission's investigation to require FPC to produce the additional information and data requested by FIPUG, when much of FIPUG's discovery is duplicative of discovery requested by the Commission's Staff. Any extraneous information requested by FIPUG that was not requested by the Staff obviously has more to do with FIPUG's consumers' contracts with FPC than it does with the purpose of this docket.

¹ FPC does not intend to waive its previously stated objections to the nature of this proceeding and to the status of FIPUG as an intervenor.

RESPONSE IN SUPPORT OF SPECIFIC OBJECTIONS

Objections to Interrogatories 1, 4(a), 7, 8 and 10; Requests for Production 1, 2, 5 and 6

As set out more fully in FPC's objections, FPC has already responded to Staff's discovery that targets much of the same information and data that FIPUG requests in the above referenced interrogatories and requests for production.² It would be an unnecessary waste of time and resources to respond to this duplicative discovery. FPC also incorporates its previous objections to these interrogatories.

Objections to Interrogatories 4 (b),(c),(d), 5, 11 and 12

FPC incorporates its previous objections to these interrogatories. In order to respond to the above referenced interrogatories, FPC would have to recompile and/or create data and could not in some instances provide responses to suit FIPUG's interrogatories as the data is not recorded or maintained in that manner in the normal course of FPC's business. For example, responding to interrogatory 4 (b), (c), and (d) would require the FPC to re-calculate its data in order to satisfy FIPUG's request for an analysis specifying "monthly peaks." FPC's reserve margin methodology is tied to "seasonal" system peaks. In addition, if FPC were compelled to respond to interrogatory 5, it would be forced to obtain and analyze new data in order to consider FIPUG's planning scenario that FPC does not consider a reasonable or likely scenario. As for Interrogatories 11 and 12, there is no issue in this docket regarding the methodology or calculation of a "capacity margin." These interrogatories are overbroad, unduly burdensome, and would require FPC to recompile and/or create data and investigate tangential issues of interest only to FIPUG.

² With regard to Request for Production 6, FIPUG is requesting information on contracts that are already filed, and publicly available, at the Commission.

Objections to Interrogatory 7; Requests for Production 3 and 4

FPC incorporates its previous objections to these interrogatories and requests for production. Interrogatory 7 and Requests for Production 3 and 4 attempt to obtain detailed system information relating to FPC's proper treatment of non-firm customers. FPC's treatment of its non-firm customers is not at issue in this proceeding. While FIPUG may be interested in this information, the compelled production of such information will not "afford the Commission a full record with sufficient information upon which to make a decision regarding the adequacy of the reserve margins planned for Peninsular Florida." See Order No. PSC-99-1274-PCO-EU.

Objections to Interrogatories 9 and 14

FIPUG's Interrogatory 9, in its entirety, states: "[h]ow is Florida impacted by power shortages in other states?" FIPUG has not defined the term "impacted." FPC has no way of knowing what type of "impact" FIPUG references in its interrogatory. Likewise, FPC does not purport to speak for the entire State of Florida. In addition, FIPUG's Interrogatory 14, in its entirety, states: "[w]hat is the minimum term of a firm wholesale sale?" FIPUG has not defined the phrase "firm wholesale sale." These interrogatories do not warrant responses because they are unclear and apparently argumentative. If FIPUG wishes to construct some argument about these issues, it can do so without FPC's assistance. FPC incorporates its previous objections to these interrogatories.

Objections to Interrogatories 2, 3, 6, 13, 15, 16 (and certain other interrogatories as set out in FPC's previous objections)

FPC incorporates its previous objections to these interrogatories. The Commission has set out a very broad list of issues to be investigated during this proceeding, and FIPUG should not be allowed to compel responses to discovery that is tangential, at best, to those issues. It is

the Commission, not FIPUG, which should be directing the course of discovery in this proceeding. In addition, FIPUG's discovery seeks details and minutia pertaining to FPC's purchases, which would add nothing to the Commission's investigation.

Respectfully submitted,

FLORIDA POWER CORPORATION

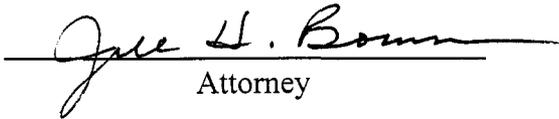


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FLORIDA POWER CORPORATION'S OBJECTIONS TO THE FLORIDA INDUSTRIAL POWER GROUP'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS has been furnished via U.S. Mail to all counsel of record listed below this 8th day of October, 1999.


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