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October 19, 1999

Robert V. Elias
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket 981890-EU
Generic Investigation into the Aggregate Electric Utility
Reserve Margins Planned for Peninsular Florida

Dear Mr. Elias:

As I indicated during the Prehearing Conference, the Florida Reliability Coordinating Council included two legal issues in its Prehearing Statement that were not included in the draft Prehearing Order. Those issues appear on pages 2 and 3 of FRCC's Prehearing Statement, as well as on the electronic version of that Prehearing Statement that was filed with the Division of Records and Reporting.

For purposes of clarity, the following are the two issues and FRCC's positions thereon that were included in the FRCC's Prehearing Statement and the electronic file:

Issue 1: Whether this proceeding constitutes a formal proceeding pursuant to Sections 120.569, and 120.57, Florida Statutes:

FRCC's Position: No.

Issue 2: If this proceeding constitutes a formal proceeding pursuant to Sections 120.569, and 120.57, Florida Statutes, who bears the burden of proof?

FRCC's Position: If this is a formal proceeding under Sections 120.569, and 120.57, Florida Statutes, the Commission bears the burden of proof on all issues. Nevertheless, the Commission should not adopt any policies regarding reserve margins outside of a rulemaking proceeding pursuant to Section 120.54, Florida Statutes. However, to the extent that the Commission intends in this proceeding to rely on or formulate any statement meeting the definition of a rule

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October 19, 1999
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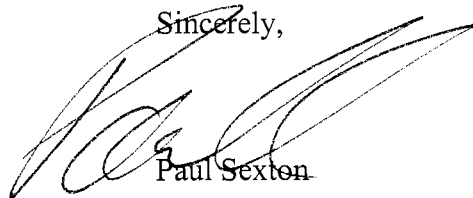
under Section 120.52(15), Florida Statutes, that has not been adopted pursuant to the rulemaking procedures of Section 120.54, Florida Statutes, Section 120.57(1)(e)2., Florida Statutes, places the burden on the Commission to prove that the statement:

- a. Is within the powers, functions, and duties delegated to the Commission by the Legislature;
- b. Does not enlarge, modify, or contravene the specific provisions of law implemented;
- c. Is not vague, establishes adequate standards for Commission decisions, and does not vest unbridled discretion in the Commission;
- d. Is not arbitrary or capricious;
- e. Is not being applied to the substantially affected party without due notice;
- f. Is supported by competent and substantial evidence; and
- g. Does not impose excessive regulatory costs on any regulated person.

Section 120.57(1)(e)2., Florida Statutes, requires the Commission to address each of these criteria, both on the record at hearing, and in any final order.

The FRCC requests that the foregoing issues and positions be included in the Prehearing Order. No ruling has been made to date that any party would be precluded from raising pertinent legal issues in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Sexton", is written over the typed name.

Paul Sexton

PS:qs

Enclosure

cc: Ken Wiley
Parties of Record