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November 1, 1999

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**ORIGINAL**

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**By Hand Delivery**

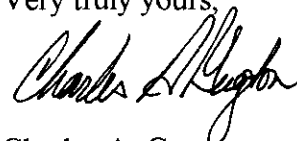
**Re: DOCKET NO. 991462-EU**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") in Docket No. 991462-EU are the original and fifteen (15) copies of Motion for Extension of Time to File Testimony.

If you or your staff have any questions regarding this filing, please contact me.


Very truly yours,



Charles A. Guyton

AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_ Enclosure  
CMU \_\_\_\_\_ es: Parties of Record  
CTR \_\_\_\_\_  
EAG Staff  
LEG \_\_\_\_\_  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Petition for determination of need for an ) DOCKET NO. 991462-EU**  
**electrical power plant in Okeechobee County )**  
**by Okeechobee Generating company, L.L.C. ) DATE: November 1, 1999**

**FLORIDA POWER & LIGHT COMPANY'S  
MOTION TO EXTEND TESTIMONY FILING DEADLINE**

Pursuant to Florida Administrative Code Rule 28-106.205, Florida Power & Light Company ("FPL") moves the Commission to extend the intervenors' testimony filing deadline in Docket No. 991462-EU from November 8, 1999 to alternative dates set forth more fully in the body of this motion. As grounds for its motion, FPL states:

1. The schedule for this case is extremely accelerated and abbreviated. The hearing scheduled for December 6-8, 1999 falls only 10 weeks after the filing of the petition and only 6 weeks after the filing of the petitioner's direct testimony. The discovery cut off date scheduled by the Prehearing Officer is only five weeks and two days after the filing of direct testimony.

2. The deadline for intervenor testimony established by the Procedural Order in this case is November 8, 1999. That deadline is one week from today. As of today, FPL has a petition to intervene outstanding for three and one half weeks without a ruling. Absent a ruling granting FPL party status, FPL may not initiate discovery (or it may initiate discovery upon the terms and conditions set forth by the petitioner, conditions which FPL believes do not provide an opportunity for thorough discovery under the extremely compressed schedule in this case). Even if FPL's intervention were granted today, FPL would not be able to conduct discovery before the date

currently scheduled for the filing of FPL's testimony. Discovery is necessary for FPL to have a meaningful opportunity to file testimony.

3. A week ago the petitioner filed testimony and exhibits in excess of one thousand pages. Discovery of this information is essential if FPL is to be given a reasonable opportunity to respond to this testimony. Despite the massive number of pages in the direct testimony and exhibits, the computer models and the model runs underlying the opinions of the petitioners witnesses were not provided, and FPL needs to review this information prior to filing testimony.

4. While FPL conducted some discovery of three of the petitioner's witnesses in the Duke case a year ago, that discovery does not suffice for the discovery necessary for this case. It is apparent that all three witnesses have updated their analyses, requiring discovery not only as to what was done in this case but also as to what was done differently from the prior case. Moreover, one of the three witnesses testifying in this case admitted in the Duke case that he did not provide all the information responsive to FPL's discovery requests in the last case, so FPL will be seeing some of the computer models employed for the very first time. Discovery as to the petitioner's direct testimony and as to the substantial information relied upon in that testimony but not supplied in the testimony and exhibits is necessary for FPL to have a fair opportunity to prepare for trial and file its own testimony.

5. Given the present circumstances: no ruling on FPL's petition to intervene, FPL's inability to initiate discovery, FPL's inability to secure any discovery prior to filing testimony one week from today, the refinements in analysis performed since the Duke case, the introduction of six entirely new witnesses who did not testify in the Duke case, the large volume of testimony and exhibits filed late in the day only one week ago, the prior conduct of at least one of the petitioner's

witnesses of failing to respond fully to FPL's prior discovery, FPC and FPL's inability to secure a ruling on their requests for a stay of this proceeding, FPC's and FPL's inability to secure a ruling on their request for a rule waiver, FPL, without waiving any pending claim for relief or motion previously filed with the Commission in this proceeding, respectfully requests an extension to the time for filing testimony in this proceeding.

6. If the time for petitioner responding to discovery is not shortened, then FPL respectfully submits that it needs an additional six weeks to prepare and submit its testimony from the time FPL's petition to intervene is granted and FPL is allowed to initiate discovery. That would allow FPL 30 days for a response to interrogatories and requests for production and almost two weeks in which to conduct follow up discovery through depositions and to prepare testimony. While such a schedule would be demanding upon FPL, it is possible to prepare in such a limited period of time (assuming that discovery responses are complete and not evasive and there is no time lost to motions to compel). If FPL's petition to intervene were granted today, the earliest reasonable time for FPL to have to submit testimony without a shortening of the discovery periods would be December 13, 1999. Of course, for every day that passes without a ruling on intervention, there would need to be another day added to the testimony filing deadline.

7. If FPL's motion to expedite petitioner's discovery responses to 10 days were granted and FPL's petition to intervene were granted today, then a reasonable time for the scheduling of FPL's direct testimony would be November 22, 1999 (assuming OGC is responsive to discovery requests and no discovery controversies have to be resolved by the Prehearing Officer). That would provide FPL with an opportunity to conduct two rounds of discovery by interrogatory and requests for production as well as depositions with the compelling of documents after the initial round of

discovery. Of course, for every day that passes without a ruling on intervention, there would need to be another day added to the testimony filing deadline.

8. If the petitioner's alternative discovery arrangement of allowing 20 days for discovery responses were approved and FPL's petition to intervene were granted today, then a reasonable day for the filing of FPL's direct testimony (assuming that the petitioner is responsive and no motions to compel are required) would be December 6, 1999. That would allow FPL one round of discovery by interrogatories and requests to produce and two weeks for follow up discovery by deposition before filing testimony. Of course, for every day that passes without a ruling on intervention, there would need to be another day added to the testimony filing deadline.

9. For the foregoing reasons, FPL requests that the Prehearing Officer enter a procedural order extending the date for the filing of intervenor testimony until at least six weeks following the date that FPL's intervention is granted. In the alternative, if FPL's motion to expedite discovery is granted, FPL requests an extension for filing testimony of three weeks from the date intervention is granted. Further in the alternative, if the petitioner's suggested discovery arrangement is granted, FPL requests that the deadline for filing FPL's testimony be extended until five weeks after FPL's intervention is granted. Any schedule shorter than these will so severely compromise FPL's ability to prepare for trial that it will be denied a fair hearing.

9. OGC is not prejudiced by the relief FPL seeks. OGC chose the time for filing the petition, chose not to file supporting testimony with its petition, and chose to file for a need determination without filing the detailed information required in a site certification application. OGC chose to file testimony that does not contain the supporting data and model runs. OGC chose to rely upon a model that has not been critically reviewed by any regulatory Commission. OGC was

under no time requirement to file in this fashion, given that it does not anticipate initiating its site certification process for another 8 months. Consequently, the circumstances in which FPL finds itself so constrained by time were much the choosing of the petitioner, and relief should be granted to afford FPL a meaningful opportunity to prepare for trial.

10. In asking for this relief, FPL is undertaking to set forth a schedule which, in its opinion, barely affords FPL, or any other intervenor, due process. FPL could certainly justify a longer extension of the testimony filing deadline, particularly given the fact that OGC does not plan to initiate its site certification until June of next year. However, FPL's purpose is not delay. Its purpose is a fair hearing and a reasonable time to prepare for hearing. If the petitioner were interested in a fair and full hearing of its need determination petition rather than a rush to hearing, the petitioner would not oppose this reasonable request.

11. Counsel for FPL has conferred with counsel for all parties other than LEAF's and TECO's counsel who could not be reached. None of the counsel contacted object to the extended time for the filing of FPL's testimony other than petitioner's counsel.

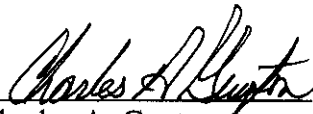
WHEREFORE, FPL respectfully requests that the Prehearing Officer enter an order extending the time for the filing of FPL's testimony until six weeks from the date FPL's intervention is granted, or in the alternative if FPL's motion to expedite discovery is granted until three weeks after FPL's petition to intervene is granted, or in the alternative, if the petitioner's discovery schedule is granted, five weeks after FPL's petition to intervene is granted. FPL further states that all relief requested herein assumes there is no need for Commission intervention in the discovery process, and

delays associated with compelling discovery could reasonably result in further delays in the filing of testimony.

Respectfully submitted,

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Attorneys for Florida Power &  
Light Company

By:   
Charles A. Guyton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November, 1999 a copy of Florida Power & Light Company's Motion to Extend Testimony Filing Deadline in Docket No. 991462-EU was served by either hand delivery (\*) or U.S. Mail upon the following persons:

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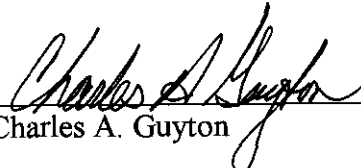
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