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November 2, 1999

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

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 Florida Power & Light Company's Response to OGC's Motion for Alternate Expedited Discovery Schedule.

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

Very truly yours,

Charles A. Guyton
Charles A. Guyton

Enclosure
cc: Parties of Record

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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 2, 1999

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO OGC'S MOTION FOR
ALTERNATE EXPEDITED DISCOVERY SCHEDULE**

Pursuant to Florida Administrative Code Rule 28-106.205, Florida Power & Light Company ("FPL") responds as follows to OGC's Motion for Alternate Expedited Discovery Schedule filed on October 26, 1999.

1. The procedural schedule established for this docket and the Commission's continuing failure to rule on intervention, thereby denying the intervenors the ability to conduct discovery, do not afford intervenors fundamental due process. 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. Today, we are 34 days away from the first day of trial and 6 days away from FPL having to file testimony and FPL has not been granted party status that allows FPL to initiate discovery.

2. FPL has joined in FPC's request for a stay of the proceeding, but there has been no ruling on that request. FPL has requested expedited discovery, but there has been no ruling on that request.

3. FPL sought an expedited discovery process that allowed the petitioner 10 days to respond to requests. FPL felt and continues to feel that its request is imminently reasonable given that (a) the petitioner is the only party with the supporting data for its requested determination of need, (b) much of that supporting data has not been provided in the petition and supporting exhibits filed by the petitioner, even though the Commission's rules contemplate that such information will be filed as part of the petition and supporting exhibits, (c) much of the supporting data and computer analyses underlying the lengthy opinion testimony of Dr. Nesbitt is not contained in his testimony and exhibits, (d) the petitioner did not file testimony at the time it filed its petition, even though it had the intention of holding the Commission to a procedural schedule that included a hearing within 90 days, (e) the petitioner did not file its application for site certification at the time it filed its petition for determination of need, resulting in the Commission and the parties having far less data than would have been available if the application had been filed contemporaneously as allowed, (f) the petitioner did not agree to FPL's intervenor status, allowing FPL to begin discovery, even though it is clear that FPL meets the test for intervention and was granted intervention in the Duke case on much the same grounds, (g) there are nine witnesses testifying for OGC who filed over a thousand pages of testimony and exhibits only two weeks before FPL's testimony is due, (h) OGC's primary witness employs computer models that have not been critically reviewed by a state or federal utility regulatory agency, and he has updated that model with a new model specific to FRCC that has not previously been employed, (i) OGC's primary witness failed to provide all models runs responsive to discovery requests in the Duke case, (j) OGC's primary witness insisted upon stringent nondisclosure arrangements regarding his model in the Duke case, requiring the return of all model runs and operating manuals, limiting the persons to whom FPL could disclose the model runs, and prohibiting FPL from making copies of the model and model runs, (k) there is so little time available

for discovery (four weeks and one day from today) until the discovery deadline, (l) the procedural schedule and the Commission's failure to rule on intervention calls for FPL to file testimony without the benefit of discovery.

4. The petitioner objects to FPL's expedited discovery schedule and poses an alternative: (a) twenty instead of ten days for responses, and (b) the same twenty days applies both to the petitioners and intervenors. FPL objects to OGC's alternative arrangement for the following reasons.

5. OGC's twenty day response period does not afford FPL sufficient time for discovery. FPL has not finished its review of the 1,000 plus pages of testimony and exhibits filed last Monday (a full month after the filing of the need petition and only six weeks prior to trial). However, FPL, based upon the representation of OGC's counsel made today that he will treat discovery as served upon the day of receipt (assuming that FPL is ultimately granted intervention), is forwarding today its first sets of discovery to OGC. More discovery will follow once FPL has had a complete opportunity to review OGC's testimony and exhibits. However, even with the initiation of discovery today there is not time for FPL to complete discovery before its testimony is due or even before trial, under the alternative schedule posed by the petitioner.

6. Under the petitioner's alternate discovery schedule, responses to FPL's initial discovery requests will not be served until November 22, 1999, a mere two weeks prior to hearing. Under the petitioner's alternate schedule, unless FPL's motion to extend time for the filing of testimony is granted, FPL will be required to file testimony (November 8, 1999) prior to receiving any discovery. Under the petitioner's alternate schedule, FPL will have one week and two days to conduct any follow up discovery prior to the discovery deadline. Under the petitioner's alternate schedule, depositions requiring the production of documents will not be able to be scheduled until

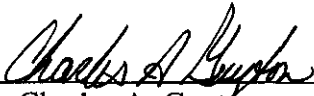
Thanksgiving week. Virtually every deposition will require the production of documents. Under the petitioner's alternate discovery schedule, FPL will have one week and two days prior to the discovery deadline to move to compel evasive or nonresponsive answers to FPL's initial discovery. Under the petitioner's discovery schedule, there is not enough time for the Commission to address motions to compel discovery when objections are raised or to rule upon requests for confidentiality. As the foregoing discussion shows, under the petitioner's discovery schedule FPL does not have an adequate opportunity to conduct discovery upon the very lengthy need determination testimony and very complex, novel computer models unless the hearing in this matter is deferred.

WHEREFORE, FPL respectfully requests that the petitioner's alternate discovery schedule be denied and the discovery schedule requested by FPL be implemented.

Respectfully submitted,

Steel Hector & Davis L.L.P.
Suite 601, 215 S. Monroe St.
Tallahassee, Florida 32301

Attorneys for Florida Power &
Light Company

By: 
Charles A. Guyton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Response to OGC's Motion for Alternate Expedited Discovery Schedule in Docket No. 991462-EU was served by Hand Delivery (when indicated with an *) or mailed this 2nd day of November, 1999 to the following:

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