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November 16, 1999

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**HAND-DELIVERY**

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

ORIGINAL

RECORDS AND  
REPORTING

NOV 16 PM 3:33

RECEIVED FPSC

**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 fifteen (15) copies of Florida Power & Light Company's Objections to Okeechobee Generating Company's First Request for Production of Documents (Nos. 1-26), First Set of Interrogatories (1-85) and First Request for Admissions (1-44) served by fax yesterday on all parties, including Mr. Keating of your legal department. The original will be delivered to your office tomorrow.

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

Very truly yours,

*Charles A. Guyton*  
Charles A. Guyton

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEC \_\_\_\_\_
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Enclosure

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DOCUMENT NUMBER-DATE

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Determination )  
of Need for an Electrical Power ) DOCKET NO. 991462-EU  
Plant in Okeechobee County by )  
Okeechobee Generating Company, )  
L.L.C. )

**FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS TO  
OKEECHOBEE GENERATING COMPANY'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS (NOS. 1-26), FIRST SET OF  
INTERROGATORIES (1-85) AND FIRST REQUEST FOR ADMISSIONS (1-44)**

Florida Power & Light Company ("FPL"), by its attorneys, hereby files its objections to Okeechobee Generating Company, L.L.C.'s First Request for Production of Documents (Nos. 1-26), its First Set of Interrogatories (Nos. 1-85), and its First Request for Admissions (Nos. 1-44) to Florida Power & Light Company.

The majority of Okeechobee Generating Company, L.L.C.'s ("OGC") production requests and interrogatories seek discovery of information not relevant to this proceeding and appear intended only to punish FPL for intervening and delay FPL's exercise of its rights as an intervenor. OGC's discovery requests simply track the allegations in FPL's Petition to Intervene, which relate to matters that are no longer at issue in this proceeding. The allegations in the Petition to Intervene concern FPL's status as a "party," *i.e.*, whether FPL has standing because its "substantial interests will be affected" by the Commission's actions in this docket. Fla. Stat. § 120.52(1)(b). In its November 4, 1999, Order Granting Petitions to Intervene and Denying Motion to Strike, the Commission recognized FPL's status as a party to this proceeding and determined that FPL properly "alleged that its substantial interests will be determined or affected by the outcome of this proceeding." Fla. Stat. § 120.52(1)(b). Moreover, as noted in that Order, although OGC filed a motion to strike certain

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allegations in FPL's petition to intervene, it failed to "contest FPL's standing to intervene."<sup>1</sup> Because FPL's standing has already been determined and any objection thereto has been waived by OGC, the discovery requests relating to FPL's Petition to Intervene seek disclosure of irrelevant information. Their sheer volume and unwarranted intrusiveness serve only to harass and delay.

The only issues remaining for determination by the Commission are whether the proposed OGC merchant plant is needed, taking into account "the need for electric system reliability and integrity, the need for adequate electricity at reasonable cost, and whether the proposed plant is the most effective available." Fla. Stat. § 403.519; Fla. Admin Code Rule 25-22.081. Discovery should accordingly be limited to those issues that focus, not on FPL's operations, but rather on OGC's proposed operations. FPL should not be forced to reveal intimate details about its business operations as the "price of admission" to test the legitimacy of OGC's need petition.

Without waiving this position, FPL makes the following general and specific objections to OGC's discovery requests:

### **General Objections**

1. FPL objects to the request that documents be produced to Landers & Parsons, P.A., 310 West College Avenue, Tallahassee, Florida 32301. FPL is required only to produce documents at a reasonable time, place, and manner.

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<sup>1</sup> Nor could OGC have seriously contested FPL's party status. The Commission's rules clearly envision that the utility principally affected by the proposed plant will be a party to the licensing proceedings. Fla. Admin. Code. Rules 25-22.081(1) & 25-22.080(3) (requiring a petition for need determination to include "a general description of the utility or utilities primarily affected . . ." and specific data related to that utility, and requiring notice to that utility). As the utility in closest proximity to the OGC plant site and over whose transmission infrastructure OGC plans to transmit its power, FPL clearly is a principally affected utility and thus has a right under the Commission's rules to participate in this proceeding.

2. FPL objects to any production request that calls for the production of documents protected by the attorney-client privilege, the work-product doctrine, the accountant-client privilege, the trade-secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made to these requests or is later determined to be applicable based on the discovery of documents, investigation, or analysis. FPL in no way intends to waive any such privilege or protection.

3. FPL further objects to these production requests and any definitions or instructions that purport to expand FPL's obligations under applicable law.

4. FPL objects to any production request that requires the production of "all" or "each" as it cannot give assurances, even after a good faith and reasonably diligent attempt, that "all" or "each" responsive document will be found. Indeed, it may well be impossible to assure compliance with the exercise of reasonable diligence.

5. FPL incorporates by reference all of the foregoing general objections into each of its specific objections set forth below as though pleaded therein

#### **Specific Objections to Requests for Production**

6. FPL objects to Requests for Production Nos. 4, 5, 6, 7 and 21 because they are overbroad, unduly burdensome, harassing and unlikely to lead to the discovery of admissible evidence. Over the past ten years, FPL has engaged in hundreds of thousands of transactions that could be responsive to these requests. Most of those transactions have numerous related documents, including invoices, confirmations and various contractual documents. Merely locating and assembling all of those documents would require months of effort; reviewing the documents for privilege and confidentiality concerns would require even longer. Moreover, FPL cannot imagine

how most, if any, of the requested documents could be relevant to OGC's burden of proving the need for its proposed plant. Requiring burdensome production of potentially sensitive contractual documents that bear no apparent relation to the issues of the case would simply be harassment of FPL.

7. FPL objects to Requests for Production Nos. 14, 17 and 23 because they are overbroad, unduly burdensome and harassing. None of these requests specifies a time period to which they apply. As a result, they involve documents related to numerous Commission dockets that have occurred over many years. Documents responsive to these requests that were generated years ago have little, if any, realistic connection to OGC's burden of proving the need for its proposed plant today, yet locating and assembling such documents would be very difficult and time consuming. OGC's failure to limit the scope of these requests to a reasonable period of time is calculated only to harass FPL.

#### **Specific Objections to Interrogatories**

8. FPL objects to Interrogatory Nos. 32, 49, 64 and 65 because they call for opinions of law.

9. FPL objects to Interrogatory Nos. 54, 74 and 75 because they call for FPL to reveal confidential, proprietary information. FPL intends to move for a protective order regarding same.

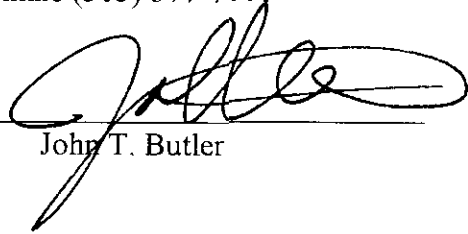
#### **Specific Objections to Requests for Admissions**

10. FPL objects to Requests for Admission Nos. 8, 9, 10, 11, 24, 26 and 27 because they assert general conclusions of law rather than statements or opinions of fact or the application of law to fact.

Respectfully submitted,

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By:

  
John T. Butler

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Objections to Okeechobee Generating Company's First Request for Production of Documents (Nos. 1-26), its First Set of Interrogatories (Nos. 1-85), and its First Request for Admissions (Nos. 1-44) to Florida Power & Light Company was served by facsimile transmission this 15th day of November, 1999 to the following:

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