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December 20, 1999

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

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RECORDS AND REPORTING

Re: Docket No. 991680-EI

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Power & Light Company ("FPL") are the original and fifteen copies of FPL's Answer and Affirmative Defenses.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

AFA
APP
CAF 1
CMU
CTR
EAG 3
LEG Jaye
MAS
OPC
RRR
SEC 1
WAW
OTH

KAH/rl
Enclosures
cc: Mr. W. W. Walker
Ms. Anne Grealy
Ms. Rosemary Morley
Mr. Carlos Diaz
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Grace Jaye, Esq.
Ms. Elisabeth Draper

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Done 3/20/00

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMPLAINT BY THE COLONY BEACH & TENNIS CLUB, INC. AGAINST FLORIDA POWER & LIGHT COMPANY REGARDING RATES CHARGED FOR SERVICE BETWEEN JANUARY 1988 AND JULY 1998, AND REQUEST FOR REFUND.	)	Docket No. 991680-EI Filed: December 20, 1999

FLORIDA POWER & LIGHT COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rule 28-106.203, Florida Administrative Code, hereby files its Answer and Affirmative Defenses to the Complaint filed by Colony Beach & Tennis Club, Inc. ("Colony Beach").

ANSWER

1. With respect to paragraph I of the Complaint, FPL denies that application of Rules 25-6.093(2) and 25-6.049(5)(a)(3), Florida Administrative Code, provide a basis for a refund from FPL under the facts alleged in the complaint.

2. With respect to paragraph II of the Complaint, FPL admits that the two rules cited above were adopted consistent with the authority granted to the Commission under Section 366.05(1), Florida Statutes but denies that Colony Beach is entitled to a refund pursuant to said rules.

3. With respect to paragraph III of the Complaint, FPL alleges as follows:

a. FPL admits that the Certificate and Agreement of Limited Partnership for Colony Beach & Tennis Club, Ltd. states that "[t]he Partnership is formed for the primary purpose of operating and managing as rental accommodations in a beach resort and tennis club, 232 hotel condominium units..." in Longboat Key, Florida. FPL also admits that the Certificate of Agreement

of Limited Partnership permits each limited partner to occupy any unit rent-free for no more than thirty days out of each calendar year. FPL is without knowledge and therefore denies whether the Certificate of Agreement of Limited Partnership remains in full force and effect today and demands strict proof thereof. FPL is without knowledge and therefore denies the allegation that Colony Beach has no permanent residents, other than management personnel, and demands strict proof thereof.

b. FPL is without knowledge and therefore denies the allegation that Colony Beach has continuously operated as a hotel pursuant to Section 509.242(1)(a), Florida Statutes, with no permanent residents (other than management) since its inception in 1976 and demands strict proof thereof. FPL is without knowledge and therefore denies the allegation that Colony Beach has been licensed with the State of Florida, Department of Business Regulation as a hotel/motel and restaurant prior to 1988 and demands strict proof thereof. FPL is also without knowledge and therefore denies the allegation that Colony Beach has been licensed and/or registered with the City of Longboat Key as a hotel/motel prior to 1988 and demands strict proof thereof. FPL is without knowledge and therefore denies the allegation that Colony Beach has been licensed with Sarasota County as a hotel since the inception of the County Occupational License and demands strict proof thereof. FPL adds that the documents attached to the Complaint indicate that any licenses held by Colony Beach with the Department of Business and Professional Regulation to operate a motel and restaurant expired December 1, 1999, and that any occupational licenses issued by Sarasota County to operate a hotel expired September 30, 1999.

c. FPL admits that the restaurant operated by Colony Beach has received service from FPL on a commercial demand rate.

d. FPL is without knowledge and therefore denies the allegation that Colony

Beach requested assistance from FPL to master meter the facility and to obtain service on the most cost advantageous rate in January 1988 and demands strict proof thereof. FPL further alleges that Colony Beach was not eligible for master meter service under Rule 25-6.049, Florida Administrative Code, in January 1988.

e. FPL admits that in early 1997, Colony Beach requested FPL to master meter the facility at issue and that FPL complied with such request based on an erroneous application of amendments to Rule 25-6.049, Florida Administrative Code, relating to time-share plans which became effective on March 23, 1997. FPL denies that it should have allowed Colony Beach to master meter the facility in 1988 and demands strict proof thereof. FPL also denies that Colony Beach paid more for electricity to FPL than it should have between January 1988 and June 1998 and demands strict proof thereof.

4. With respect to paragraph IV of the Complaint, FPL is without knowledge and therefore denies the allegation of Colony Beach that it requested assistance for master metering in 1988 and help in obtaining a lower electric rate and demands strict proof thereof. FPL also is without knowledge of and therefore denies the allegations set forth in the Affidavits of Michael A. Moulton and Jerry R. Sanger attached to the Complaint and demands strict proof thereof.

5. With respect to paragraph V of the Complaint, FPL denies these allegations and demands strict proof thereof.

6. With respect to paragraph VI of the Complaint, FPL is without knowledge and therefore denies that Colony Beach was charged a higher electric rate than comparable or similar facilities for the period of time in question and demands strict proof thereof. Further, this allegation is irrelevant as FPL properly charged the individual units at Colony Beach individually metered rates

prior to the conversion to master metering. FPL admits that Colony Beach is seeking a refund from FPL for the difference between residential rates and commercial demand rates, plus interest, for the period of January 1988 through July 1998.

7. With respect to paragraph VII of the Complaint, FPL admits that it has engaged in discussions with Mr. Mazo concerning the conversion of Colony Beach to master metering and that the individually metered units at Colony Beach were converted to master metering in June, 1998. FPL denies that the units were properly converted to master metering on the basis that Colony Beach operates as a hotel and demands strict proof thereof.

AFFIRMATIVE DEFENSES

Affirmative Defense 1 - The commercial rates allegedly sought by Colony Beach in January 1988 were reflected in FPL's approved and effective tariffs on file with the Commission. These tariffs provided the rates, terms and conditions for commercial service and constituted a written offer for electric service from FPL to qualifying commercial service customers which, if accepted, had the force and effect of a valid legal contract. Colony Beach's request for a refund effectively seeks specific performance of a written offer by FPL, reflected in FPL's commercial service tariffs in effect in January 1988, to Colony Beach for the provision of electric service under commercial service rates. As a matter of law, Colony Beach was required to file its request for a refund seeking specific performance of FPL's tariffs reflecting commercial service rates within one year after FPL's alleged refusal to offer such rates. Accordingly, Colony Beach's request for a refund is barred under Section 95.11(5)(a), Florida Statutes (1999).

Affirmative Defense 2 - The commercial rates allegedly sought by Colony Beach in January 1988 were reflected in FPL's approved and effective tariffs on file with the Commission. These

tariffs provided the rates, terms and conditions for commercial service and constituted a written offer for electric service from FPL to qualifying commercial service customers which, if accepted, had the force and effect of a valid legal contract. To the extent FPL's alleged refusal to convert the units to master metering may be properly characterized as a breach of any tariffed, contractual obligation to provide Colony Beach with commercial service rates, then Colony Beach was obligated to file its request for a refund within five years after FPL's alleged refusal to convert the facility to master metering in January 1988. As a matter of law, Colony Beach's Complaint is barred under Section 95.11(2)(b), Florida Statutes.

Affirmative Defense 3 - The commercial rates allegedly sought by Colony Beach in January 1988 were reflected in FPL's approved and effective tariffs on file with the Commission. These tariffs provided the rates, terms and conditions for commercial service and constituted a written offer for electric service from FPL to qualifying commercial service customers which, if accepted, had the force and effect of a valid legal contract. To the extent FPL's alleged refusal to convert the units to master metering may be properly characterized as a breach of an oral agreement to provide Colony Beach with commercial service rates, then Colony Beach was obligated to file its request for a refund within four years after FPL's alleged refusal to convert the facility to master metering in January 1988. As a matter of law, Colony Beach's Complaint is barred under Section 95.11(3)(p), Florida Statutes.

Affirmative Defense 4 - Colony Beach essentially takes the position some eleven years after the fact that FPL improperly applied Rule 25-6.049, Florida Administrative Code, and violated Rule 25-6.093(2), Florida Administrative Code, as they existed in January 1988. Colony Beach failed to file a complaint for a refund based on such alleged rule violations, a petition for declaratory

statement concerning the application of such rules to Colony Beach's specific facts and circumstances or both until the filing of Colony Beach's Complaint in November 1999. Accordingly, Colony Beach's Complaint is barred by Section 95.11(3)(p), Florida Statutes (1999), Section 95.11(6), Florida Statutes (1999), and the doctrine of waiver.

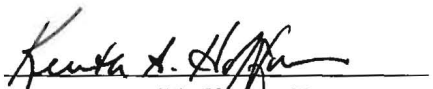
Affirmative Defense 5 - Colony Beach holds itself out as, operates as and legally is a "resort condominium" as defined by Section 509.242(1)(c), Florida Statutes (1999). As a resort condominium, Colony Beach was at all material times, including January 1988, and is now ineligible for master metering under Rule 25-6.049, Florida Administrative Code. FPL erroneously performed the conversion of the Colony Beach resort condominium individual units to a master meter in June, 1998 without first requiring Colony Beach to file a petition for rule waiver as required under Section 120.542, Florida Statutes (1999). This was precisely the procedure followed by a similarly situated resort condominium, Holiday Villas II Condominium Association, Inc., and the petition for rule waiver was granted pursuant to Order No. PSC-98-1193-FOF-EU.

Affirmative Defense 6 - Rule 25-6.049(5)(a), Florida Administrative Code, requires individual metering, consistent with the intent of the rule to restrict instances where master metering could be used and require individual meters wherever possible as a conservation measure, except where the rule specifically authorizes the use of a master meter for a specific type of facility. In light of the intent of the rule and legislative and Commission policy to promote conservation, the exceptions to the individual metering requirement in the rule should be strictly construed. Accordingly, the lack of an express exception to the individual metering requirement for "resort condominiums" confirms that such facilities must be individually metered unless a rule waiver is requested and granted.

Affirmative Defense 7 - FPL has no documentation indicating that Colony Beach provided documentation to FP&L prior to or during January 1988 confirming that Colony Beach operated as a hotel. FPL should not be held accountable for Colony Beach's failure to provide such documentation. Moreover, even if such documentation had been presented to FPL, FPL was obligated to comply with Commission rules in effect at that time which required individual metering for resort condominiums such as Colony Beach.

WHEREFORE, FPL respectfully requests that the Commission deny in full Colony Beach's Complaint and request for refunds.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 20th day of December, 1999:

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Clearwater, FL 33762

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FPL/colony.ans