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February 3, 2000

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 Motion to Transfer Complaint filed by Colony Beach & Tennis Club, Inc. to the Division of Administrative Hearings.

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
Kenneth A. Hoffman

AFA _____
APP _____
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01671 FEB-78

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMPLAINT BY THE COLONY BEACH)
 & TENNIS CLUB, INC. AGAINST FLORIDA)
 POWER & LIGHT COMPANY REGARDING) Docket No. 991680-EI
 RATES CHARGED FOR SERVICE BETWEEN)
 JANUARY 1988 AND JULY 1998, AND) Filed: February 7, 2000
 REQUEST FOR REFUND.)
)
)
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**FLORIDA POWER & LIGHT COMPANY'S
 MOTION TO TRANSFER COMPLAINT FILED BY
 COLONY BEACH & TENNIS CLUB, INC. TO THE
DIVISION OF ADMINISTRATIVE HEARINGS**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Section 350.125, Florida Statutes, and Rule 28-106.201(3), Florida Administrative Code, hereby requests the Florida Public Service Commission ("Commission") to transfer the Complaint filed by Colony Beach & Tennis Club, Inc. ("Colony Beach") to the Division of Administrative Hearings ("DOAH") for the entry of a recommended order which would be addressed and considered by the Commission in entering a final order in this proceeding. In support of this Motion, FPL states as follows:

1. On or about November 4, 1999, Colony Beach filed a complaint with the Commission seeking refunds from FPL on grounds that FPL allegedly violated Rules 25-6.093(2) and 25-6.049, Florida Administrative Code, by failing to provide the 232 units at the Colony Beach resort condominium with master metered commercial service in the early part of 1988. Colony Beach's complaint alleges that it requested master metering in January 1988 and that the Colony Beach resort condominium was converted to master metering in July 1998. The complaint seeks refunds based on the differences between FPL's residential and commercial rates from January 1988 through July

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FPC-RECORDS/REPORTING

1998, plus interest. See complaint, at ¶VI.

2. On December 20, 1999, FPL filed its answer and affirmative defenses to the complaint. Pursuant to its affirmative defenses, FPL contends that Colony Beach was not "overbilled" for electric service but was billed the correct, applicable rates for residential service from January 1988 through July 1998. FPL emphasizes that Colony Beach's complaint is in the nature of a civil action seeking specific performance of FPL's then existing tariffed rates for commercial service in effect in January 1988. FPL asserts that although it has no documentation indicating Colony Beach requested commercial service in January 1998, Colony Beach's complaint seeking to retroactively convert the 232 units to commercial service as of January 1988 is barred by Florida's statute of limitations and principles of waivers and laches. Further, FPL asserts that Commission precedent confirms that absent a waiver granted by the Commission, a resort condominium is subject to the individual metering requirements (residential service) set forth in Rule 25-6.049(5)(a), Florida Administrative Code.

3. On or about January 3, 2000, Colony Beach filed its reply to affirmative defenses of FPL and a motion for hearing. On January 12, 2000, FPL filed its response to Colony Beach's motion for hearing.

4. The Commission has traditionally referred contested matters between customers and regulated utilities to DOAH. Such matters are assigned to an administrative law judge who conducts a formal administrative hearing and enters recommended findings of fact and conclusions of law which are referred back to the Commission for final disposition. In the case of FPL, the Commission

has followed this practice to resolve formal complaints filed in ten dockets dating back to 1993.¹

5. Referral to DOAH for a recommended order is particularly appropriate in this case. Here, the pleadings of the parties indicate that the ultimate disposition of this complaint may rest, in whole or in part, on the application of statute of limitations defenses raised pursuant to Chapter 95, Florida Statutes, and, possibly, the interpretation of condominium documents attached to the complaint. As the Commission does not typically deal with such issues, it would be particularly appropriate to refer the complaint to DOAH for assignment to an administrative law judge for entry of a recommended order for final disposition by the Commission.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Commission issue an order granting this motion and referring this complaint to the Division of Administrative Hearings for assignment to an administrative law judge for entry of a recommended order to be referred back to the Commission for consideration and issuance of a final order.

¹See Docket No. 990689-EI; DOAH Case No. 99-3446 (Complaint of David Roomes against FPL regarding power outages at his residence); Docket No. 980864-EI; DOAH Case No. 98-5067 (Complaint by Albert Sadaka against Florida Power & Light regarding backbilling); Docket No. 970047-EI; DOAH Case No. 97-1850 (Complaint of Thomas W. Hart against FPL regarding backbilling); Docket No. 961179-EI, DOAH Case No. 96-5834 (Complaint of Franciso Mesa against FPL regarding alleged unjustified charges for current diversion); Docket No. 960903-EI; DOAH Case No. 96-4935 (Complaint of Ms. Blanca Rodriquez against FPL regarding alleged current diversion/meter tampering rebilling for estimated usage of electricity); Docket No. 960726-EI; DOAH Case No. 96-5784 (Complaint of Eddy Grosse against FPL concerning billing for electric use at customer's rental property); Docket No. 960025-EI; DOAH Case No. 96-2367 (Complaint of Broward County Government against FPL regarding streetlight billing in Broward County); Docket No. 950504-EI; DOAH Case No. 95-4074 (Complaint of Shirley Jaeger against FPL concerning charges associated with meter tampering); Docket No. 941297-EI; DOAH Case No. 95-2514 (Complaint of Globe International Realty and Mortgage Corp. against FPL regarding refusal to provide service); and, Docket No. 930807-EI; DOAH Case No. 93-6852 (Complaint of George and Irene Tabor against FPL regarding relocation of facilities not on an easement).

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 7th day of February, 2000:

Marc D. Mazo
14252 Puffin Court
Clearwater, FL 33762

Grace Jaye, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399-0850


Kenneth A. Hoffman, Esq.