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July 17, 2000

**VIA HAND DELIVERY**

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

000868-E1

**Re: Florida Power & Light Company's Petition  
For Variance from Rule 25-17.0832(4)**

Dear Ms. Bayó:

I enclose and hand you herewith an original and fifteen (15) copies of Florida Power & Light Company's ("FPL") Petition for Variance from Rule 25-17.0832(4).

Also enclosed herewith is a diskette containing FPL's Petition in word perfect format.

If you have any questions please feel free to call me at the number listed above. Thank you for your consideration in this matter.

Sincerely,

*R. Wade Litchfield*  
R. Wade Litchfield

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FPSC-RECORDS/REPORTING

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Florida Power )  
& Light Company For Approval )  
of a Standard Offer Contract )

DOCKET NO. 000 868 - E1

Filed: \_\_\_\_\_

**PETITION FOR A VARIANCE  
FROM RULE 25-17.0832(4)(e)**

**NOW BEFORE THIS COMMISSION**, through undersigned Counsel, comes Florida Power & Light Company ("FPL" or the "Company") and, pursuant to Section 120.542, Florida Statutes (1997), hereby petitions this Commission for a variance from Rule 25-17.0832(4)(e), Florida Administrative Code. In support of its Petition, FPL states as follows:

1. FPL is a public utility subject to the jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, Florida Statutes (1997). FPL's General Offices are located at 9250 West Flagler Street, Miami, FL 33174.
2. Any pleading, motion, notice, order or other document required to be served upon the petitioner or filed by any party to this proceeding should be served upon the following individuals:

William G. Walker, III  
Vice President  
Florida Power & Light Company  
215 South Monroe Street  
Suite 810  
Tallahassee, FL 32301-1859  
(850) 224-7517  
(850) 224-7197 (telecopier)

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3. FPL has submitted on this same date under separate cover a standard offer contract ("Standard Offer Contract") for Commission approval. FPL has requested approval of the Standard Offer Contract in accordance with Rule 25-17.0832(4) of the Florida Administrative Code. The Standard Offer Contract's term is five years. Rule 25-17.0832(4)(e)(7) states: "Firm capacity and energy shall be delivered, at a minimum, for a period of ten years . . . ." Further, Rule 25-17.0832(4)(e)(3) requires that a standard offer contract provide, among other things, "an illustrative calculation of firm capacity payments for a minimum ten year term contract . . . ." FPL seeks a variance from Rule 25-17.0832(4)(e) that would permit the Standard Offer Contract to be approved with a five year term.

4. This Commission's authority to grant variances from the requirements of its rules is set forth in Section 120.542 of the Florida Statutes (1999). Section 120.542(2) provides, in pertinent part:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness.

FPL respectfully submits that it should be granted the above described variance from Rule 25-17.0832(4)(e) (sometimes hereinafter the "Rule") because: (1) the purpose of the underlying statute will be or has been achieved by other means; and (2) strict application of the ten year minimum contract term would create a substantial hardship on the Company and its electric consumers.

5. The statute underlying the Rule is Section 366.051 of the Florida Statutes (1999). Section 366.051 was enacted in connection with the Public Utility Regulatory

Policies Act ("PURPA") and directs the Commission to establish guidelines relating to the purchase of power or energy from certain cogenerators or small power producers.

The Commission's guidelines with respect to such obligations are set forth in Rules 25-17.080 through 25-17.0832 of the Florida Administrative Code.

6. The purpose of PURPA, as it relates to the obligation of utilities to purchase energy and capacity from a Qualifying Facility ("QF"), is to encourage the growth of alternative competitive electrical generating facilities which would use non-traditional fuel sources for power, while at the same time ensuring that electric consumers are not harmed through the imposition of such purchase obligations. *See* H. R. Conf. Rep. No. 1750, 1978 U.S.C.C.A.N. 7797. The purpose of Section 366.051 parallels that of Sections 201 and 210 of PURPA. Section 366.051 only authorizes the payment of a rate for QF power that equals (not exceeds) the utility's avoided cost. In short, both PURPA and Section 366.051 promote the growth of alternative generating facilities, with the express limitation that electric consumers should not pay more for power than they otherwise would.

7. Considering the dual objectives of the statute, approving the variance will not foil its underlying purpose. While it is not clear what additional QFs conceivably might be constructed specifically in response to the Standard Offer Contract, it is at least clear that the Standard Offer Contract will provide economic incentive to the development of such projects, as contemplated by the statute. The question is whether the economic incentive provided must include a contract term of ten years. FPL submits that the Standard Offer Contract, with a term of five instead of ten years, will better accomplish the purpose of the statute in that, while continuing to promote the development of power from certain QFs, it is more likely to ensure

that electric consumers do not pay excessive costs for power purchased under the Standard Offer Contract.<sup>1</sup> As noted by the Commission in Order No. PSC-99-1713-TRF-EG, "a cogenerator's ability to enter into negotiated contracts is unaffected by the variance request, and a cogenerator retains the ability to enter into a five year minimum standard offer contract with FPL."

8. The Rule's requirement that Standard Offer Contracts contain a ten-year term provides both the purchasing utility and the QF a reasonable planning horizon.<sup>2</sup> However, this requirement, like the other requirements of Rules 25-17.080 through 25-17.0832, must be read in light of the consumer-protection parameters of the statute. Thus, if a ten-year term would result in the utility paying excessive costs to a QF, a variance should be granted in order to achieve the underlying purpose of the statute.

9. Whether electric utilities should continue to be required to purchase energy and capacity pursuant to Section 210 of PURPA remains the subject of extensive debate both within the industry and in Congress. It is noteworthy that the repeal of Section 210 has been formally proposed in Congress, premised upon a finding that the implementation of Section 210 of PURPA has "resulted in many consumers paying excessive rates for electricity." H.R. 667, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1999); and S.282, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1999). See also S.2570, 106<sup>th</sup> Congress 2<sup>nd</sup> Sess. (2000). Given the uncertainty surrounding the statutory foundation for FPL's obligations under Rules 25-17.080 through 25-17.0832 of the Florida Administrative

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<sup>1</sup> Approving a standard offer contract that includes capacity payments when acceptance of the offer will not result in the deferral or avoidance of any generating unit will result in a subsidization of the accepting QF's operations. A five-year term instead of a ten-year term reduces this subsidy.

<sup>2</sup> The Federal Energy Regulatory Commission's rules implementing Sections 201 and 210 of PURPA are codified in Part 292 of the Code of Federal Regulation ("FERC Cogeneration Rules"). The FERC Cogeneration Rules do not require a minimum contract term.

Code, a five-year term for the Standard Offer Contract is reasonable and would better meet the purpose of the underlying statute in that the Company would be at less risk of having to make excessive payments to QFs.

10. As discussed in FPL's Petition for Approval of a Standard Offer Contract, the Standard Offer Contract will not defer or avoid the construction of additional generating capacity. To the extent that FPL's customers are required to make any capacity payments where no generation is avoided or deferred, FPL's electric consumers are prejudiced. However, to require in such instance capacity payments for a minimum ten-year period, especially in light of the uncertain tenure of Section 210 of PURPA, would impose an unreasonable risk and burden on FPL's electric consumers. In this regard, not only is the underlying purpose of the statute not served, but FPL and its electric consumers incur a substantial risk and hardship.

11. FPL submits that the variance requested from Rule 25-17.0832(e)(4) is appropriate and would be consistent with other recent action by the Commission. The Commission granted FPL's request for a variance from the Rule's minimum ten-year term and approved a five-year term in Docket No. 990249-EG. In Docket No. 991973-EQ, the Commission responded likewise to a similar request by Florida Power Corporation.

**WHEREFORE**, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission grant this Petition for a Variance from Rule 25-17.0832(e) such that FPL's Standard Offer Contract may be approved with a five-year term.

Respectfully submitted,

By: R. Wade Litchfield *for*  
R. Wade Litchfield  
Florida Authorized House Counsel  
Attorney for  
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Juno Beach, Florida 33408-0420  
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