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July 5, 2001

Via Federal Express

Ms. Blanca S. Bayo
Commission Clerk
Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida Transco"), and their effects on retail rates,
Docket No. 001148-EI

Dear Ms. Bayo:

Enclosed for filing in the above referenced docket are the original and fifteen (15) copies of South Florida Hospital and Healthcare Association, *et al.* (the "Hospitals") Request for Clarification, Or In The Alternative, Reconsideration. Also enclosed is a 3½" diskette in Word format, and an extra copy of the filing to be date stamped and returned to us in the enclosed self-addressed envelope.

Please do not hesitate to contact the undersigned if you have any questions regarding the above.

Very truly yours,

Mark F. Sundback

Mark F. Sundback
An Attorney For the Hospitals

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BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION

In re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida transco"), and their effect on FPL's retail rates)	§	**Docket No. 001148-EI Filed July 5, 2001**

REQUEST OF SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION, *ET AL.* FOR CLARIFICATION, OR IN THE ALTERNATIVE, RECONSIDERATION

South Florida Hospital and Healthcare Association ("SFHHA") and individual healthcare facilities supporting this effort designated in their motion to intervene in the captioned docket (collectively with the SFHHA, the "Hospitals"), by and through their undersigned counsel, and pursuant to Rule 25-22.060 of the Florida Administrative Code, hereby respectfully request clarification, or in the alternative, reconsideration, of Order No. PSC-01-1346-PCO-EI issued June 19, 2001 in the captioned docket ("June 19, 2001 Order") as described below. The Hospitals request clarification of statements contained in the June 19, 2001 Order involving a Stipulation (the "Stipulation") entered into during 1999 by Florida Power & Light Company ("FP&L"), the Florida Industrial Power Users Group ("FIPUG") the Coalition for Equitable Rates (the "Coalition"), and the Office of Public Counsel ("OPC" or "Public Counsel"). The Stipulation is attached hereto as Appendix A.

I.
PORTION OF THE JUNE 19, 2001 ORDER AT ISSUE

The Commission's June 19, 2001 Order reviews the substantial evidence demonstrating that FP&L is over-earning. *See* June 19, 2001 Order, mimeo at p. 3.

Indeed, FP&L did not take serious issue with this conclusion at the Commission's May 15, 2001 meeting at which FP&L's over-earnings were discussed. The June 19, 2001 Order reacted to this finding by attempting to balance, on one hand, the rights of parties signing the Stipulation, and on the other, the rights of entities that did not sign the Stipulation, were not parties to the Stipulation and did not agree to the provisions in the Stipulation. Particularly, the last paragraph of the "discussion" section of the June 19, 2001 Order observes that

> Although we are not a party bound by its terms, we did approve the Stipulation in Order No. PSC-99-0519-AS-EI. One provision of the stipulation provides that the revenue sharing plan is to be the parties' "exclusive mechanism" to address any excessive earnings that might occur during the term of the stipulation. This provision provides some measure of protection for the ratepayers. For this reason, we find that no money shall be placed subject to refund at this time.

June 19, 2001 Order, mimeo at p. 6.

II.
REQUESTED CLARIFICATION

The last paragraph of the discussion section of the June 19, 2001 Order is ambiguous and would benefit from clarification. Given that the June 19, 2001 Order was not the product of a complaint by a participant, much less a participant that was not a party to the Stipulation, the June 19, 2001 Order appears to suggest that at least for those entities that *were* parties to the Stipulation, the mechanism by which their base rates were to be adjusted would be limited to the revenue sharing plan established in Article 6 of the Stipulation; in contrast, an entity "not a party bound by . . . terms" of the Stipulation (*e.g.*, the Commission) has, by definition, not agreed to make the revenue sharing plan the sole

mechanism by which base rates may be reduced. Such an interpretation gives effect to Article 5 of the Stipulation which carefully defined those entities whose rights to seek base rate reductions were to be circumscribed. Article 5 provides in pertinent part:

> *OPC, FIPUG and the Coalition* will neither seek nor support any additional reduction in FPL's base rates and charges [during a three year period]. [Emphasis added.]

This interpretation would give effect to the Stipulation's provisions by and among the parties to that Stipulation, while not attempting to impose upon non-parties forfeitures of rights which the Stipulation, by its express terms, did not apply to entities aside from "OPC, FIPUG and the Coalition." If the Commission intended this result, the Hospitals would respectfully request clarification confirming this point; in that case, the balance of this pleading is mooted, and reconsideration is not necessary.

III.
ALTERNATIVE RECONSIDERATION REQUEST

However, if the last paragraph of the "discussion" section of the June 19, 2001 Order is interpreted to make a determination with respect to the rights of entities that were not parties to the Stipulation and that were not, by the express terms of the Stipulation, prevented by Article 5 of the Stipulation from seeking relief, then the Hospitals respectfully request reconsideration. Such a disposition would be contrary to essential requirements of law, arbitrary and capricious, an effort to change the express terms of the Stipulation, and unsupported by substantial competent evidence – in fact, it would ignore substantial competent evidence of FP&L's over-earnings.

The Stipulation was drafted so that "parties" to it were bound. When the Stipulation sought to preclude entities from seeking reductions in base rates by means aside from the revenue-sharing plan, it precisely identified the entities so precluded. The Stipulation by its terms was agreed to by four entities, no more. The Commission approved the Stipulation after repeatedly noting that it could not be stripped of its statutory jurisdiction by participants' contracts, and following the statement by one of the Stipulation's sponsors to the Commission that "We can bind ourselves, but we're not trying to change what your [*i.e.*, the Commission's] authority is."[1]

A.

According to FP&L, "FP&L's last full rate proceeding was 1984" (1999 10-K, Appendix B hereto), based upon data from periods before 1984. In 1999, the OPC requested a full revenue requirements rate case for FP&L, and the FIPUG and the Coalition intervened. In resolving the request, the Stipulation was entered into by the OPC, FIPUG, the Coalition and FP&L.[2] FP&L carefully noted in its disclosure materials to investors (which can create significant liability to shareholders if misleading) that the Stipulation "states that Public Counsel, FIPUG and [the] Coalition will neither seek nor support any additional base rate reductions during the three year term of the agreement unless such reduction is initiated by FP&L" (1999 Form 10-K, Appendix B hereto).

The Stipulation's actual language could not be more precise:

---

1 Docket No. 990067-EI, Tr. at p. 37:7-8 (March 16, 1999).

2 The Hospitals were not parties to the 1999 Stipulation.

> *OPC, FIPUG and the Coalition* will neither seek nor support any additional reduction in FP&L's base rates [during a three year period].

Stipulation, Article 5, second sentence; emphasis added.

The Stipulation's prefatory language references "the Parties to this Stipulation," who are the entities that "stipulate and agree" to the Stipulation's operative provisions (Stipulation, fourth "WHEREAS" clause and clause commencing "NOW THEREFORE"). In case there was any room for doubt, the Stipulation again defines parties by reference to entities signing the Stipulation (*see* Stipulation signature page), which consists of the four entities identified in Article 5 of the Stipulation (*i.e.*, FIPUG, OPC, the Coalition and FP&L).

The Stipulation does not purport to foreclose the rights of entities that are *not* signatories to seek changes in rates. The Stipulation is quite specific in identifying those entities which are precluded from seeking alternative base rate reductions -- they are the parties to the Stipulation: People's Counsel, FIPUG, the Coalition and FP&L. No *party* to the Stipulation can seek to reduce base rates by an alternative means, and it was *those parties* that stipulated and agreed to the revenue sharing plan as the exclusive means of receiving reductions in base rates during the term of the Stipulation. Thus, when entities were to be precluded from further rate relief, the Stipulation carefully identified them.

Against this backdrop, the Commission approved the Stipulation on March 17, 1999. The Commission clearly is at pains to note that it is not a party to the Stipulation, and therefore is not bound by it. The Commission's discussion of the Stipulation in the June 19, 2001 Order observed that "we are not a party bound by its terms" (*mimeo* p. 6).

For that matter, neither the Hospitals nor other non-signatories to the Stipulation were parties to the Stipulation. The Stipulation is very careful to note that it is only "OPC, FIPUG and the Coalition" that have contractually relinquished rights to "seek [or] support any additional reduction in FPL's base rates . . . ." The Commission should honor the careful contract drafting undertaken by, *inter alia*, FP&L which clearly recognized the limited scope of parties agreeing to sign on to the Stipulation, as well as the precise designation of those entities forbidden from seeking to reduce base rates by means aside from the revenue sharing mechanism.

B.

When customers seek reductions to rates found to be excessive, the mandate of the Commission under Florida law is unequivocal. "All rates and charges made, demanded of, [and] received . . . shall be fair and reasonable." Section 366.03, Florida Statutes. "Whenever the Commission . . . shall find the rates . . . collected by any public utility . . . are . . . excessive, . . . the Commission *shall* . . . fix the fair and reasonable rates to be charged." Section 366.07 (emphasis added). Upon a finding of excessive rates, the Commission shall "determine just and reasonable rates" under lawful procedures. Section 366.6(2), Florida Statutes. Thus, the Commission is directed by Florida's statutes to undertake action upon a finding that rates do not correspond to the statutory scheme. Any other disposition would be contrary to the essential requirements of State law. Additionally, unlike many other regulatory schemes, the Florida statutory framework details criteria for determining whether a utility is over-earning. *See* Section 366.071, Florida Statutes.

The Commission has repeatedly emphasized, consistent with Florida law, that it cannot be precluded by a settlement from exercising its jurisdiction under the State's statutes. In one proceeding, involving a multi-year program previously approved by the Commission,

> Southern Bell argued that, in approving the parameters of the Plan, we committed to leave the Plan as is, absent some precipitous change in circumstances. Several parties had argued that, because the cost of equity capital had fallen, certain amounts of revenue should be held subject to refund, pending the outcome of the upcoming rate case. We concluded that regardless of the Plan's silence on whether it could be modified due to changes solely in the cost of equity capital and regardless of our prior approval of the Plan, we were not precluded from acting, if the public interest so required. See Order No. PSC-92-0524-FOF-TL, issued June 18, 1992.
>
> The Commission, even if it so desired, cannot be bound to a specific course of action through the approval of a stipulation. As we stated in Docket No. 890216-TL:
>
> [W]e do not possess the legal capacity of a private party to enter into contracts covering our statutory duties. Indeed, we cannot abrogate -- by contract or otherwise -- our authority to assure that our mandate from the Legislature is carried out. As a result, we may not bind the Commission to take or forego action in derogation of our statutory obligations.
>
> See Order No. 22352, issued December 29, 1989.
>
> The parties are without authority to confer or preclude our exercise of jurisdiction by agreement. In our view, any such provisions in the Settlement are not fatal flaws; they are simply unenforceable against the Commission and are void ab initio. The parties cannot give away or obtain that for which they have no authority.

Order No. PSC-94-0172-FOF-EI at pages 5, 6. Indeed, here the Stipulation is only among the four named signatories, and no others; thus, the Stipulation does not affect the Commission's jurisdiction as to others.

This point is well-illustrated by the Staff Memorandum involving the 1999 Stipulation, which noted:

> *The stipulation binds the parties, and not the Commission.* The Commission remains able to utilize during the term of the agreement, all powers explicitly and impliedly granted by Chapter 366, Florida Statutes. This includes the ability to determine that the rates charged by FPL are no longer fair, just, and reasonable, and to change those rates. *This also includes the ability to order an interim change in rates* [emphases added].

Staff Memorandum, *mimeo* p. 10 (Appendix C hereto). The Commission, in approving the Stipulation, reiterated that it was not sacrificing its jurisdiction. *See, e.g.*, Docket No. 990067-EI Tr. at p. 38:3-7; p. 39:13-20; p.37:7-11 (March 16, 1999 (Appendix D hereto)). One of the sponsors of the Stipulation emphasized to the Commission that "[w]e can bind ourselves, but we're not trying to change what your authority is." The Commission's Chairman responded that "I don't think anyone disagrees with that . . . ." Docket No. 990067-EI, Tr. 37:7-11 (March 16, 1999 (Appendix D hereto)).

In its June 19, 2001 Order, the Commission emphasized that "[our] over-arching concern is that the public interest be protected. It is our responsibility to ensure that the company's retail rates are at an appropriate level." June 19, 2001 Order *mimeo* at p. 6. Whatever the merits of these issues might be before other jurisdictions, it is clear that under Florida law, the Commission cannot contract away its statutorily-mandated jurisdiction. Given the overwhelming record demonstrating FP&L's excessive earnings, it is appropriate and indeed legally necessary to exercise the Commission's inherent authority to reduce FP&L's rates with respect to the Hospitals. To do otherwise would be to act without substantial competent evidence and in fact would ignore substantial

competent evidence relied upon in the June 19, 2001 Order and provided, in the first instance, by FP&L.

IV.
CONCLUSION

WHEREFORE, the Hospitals request clarification as requested in Part II hereof. In the alternative, the Hospitals respectfully request reconsideration of the June 19, 2001 Order because it is arbitrary and capricious, in conflict with essential requirements of law, contrary to, and without basis in substantial competent evidence, and would do violence to the terms of the underlying Stipulation, as outlined in Part III.

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Attorneys for the Hospitals

July 5, 2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by first class mail to the following parties of record and interested parties, this 5th day of July, 2001.

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APPENDIX A

WHEREAS, the Parties to this Stipulation and Settlement have undertaken to resolve the matters raised in the Petition so as to effect a current and prompt reduction in base rates charged customers and achieve a degree of stability to the base rates and charges;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Stipulation and Settlement will become effective on the day following the vote by the Florida Public Service Commission approving this Stipulation and Settlement which will be reflected in a final Order. The starting date for the three-year term of this Stipulation and Settlement will be 30 days following the vote and will be referred to as the "Implementation Date."

2. The continued amortization and booking of expenses and other cost recognition authorized and required by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI will terminate on the day before the Implementation Date. Beginning on the Implementation Date, FPL is authorized to record an amortization amount of up to $100 million at the discretion of the Company per year for each twelve months of the

term of this Stipulation and Settlement which shall be applied to reduce nuclear and/or fossil production plant in service. The amortization will be separate and apart from normal depreciation, and existing depreciation practices and resulting depreciation rates will not be adjusted, either before, during or after the term hereof to eliminate the effect of the additional amortization amount recorded.

3. FPL will reduce its base rates by $350 million. The base rate reduction will be reflected on FPL's customer bills by reducing the base rate energy charge by .420 cents per kWh. FPL will begin applying the lower base rate energy charge required by this Stipulation and Settlement to meter readings made on and after the Implementation Date.

4. Effective on the Implementation Date, FPL's authorized return on equity range on a prospective basis will be 10.00% to 12.00% with a midpoint of 11.00% for all regulatory purposes; it being understood that during the term of this Stipulation and Settlement the achieved return on equity may, from time to time, be outside the authorized range and the sharing mechanism herein described is intended to be the appropriate and exclusive mechanism to address that circumstance. FPL's adjusted equity ratio will be capped at 55.83% as included in FPL's projected

1998 Rate of Return Report for surveillance purposes. The adjusted equity ratio equals common equity divided by the sum of common equity, preferred equity, debt and off-balance sheet obligations. The amount used for off-balance sheet obligations will be calculated per the Standard & Poor's methodology as used in its August 1998 credit report.

5. No party to this Stipulation and Settlement will request, support, or seek to impose a change in the application of any provision hereof. OPC, FIPUG and the Coalition will neither seek nor support any additional reduction in FPL's base rates and charges, including interim rate decreases, to take effect for three years from the Implementation Date unless such reduction is initiated by FPL. FPL will not petition for an increase in its base rates and charges, including interim rate increases, to take effect before three years from the Implementation Date. Other than with respect to the environmental cost recovery clause as herein addressed, FPL will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates.

6. During the term of this Stipulation and Settlement revenues which are above the levels stated herein will be shared

between FPL and its retail electric utility customers--it being expressly understood and agreed that the mechanism for earnings sharing herein established is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investment and financial results of operations. For the first 12 months beginning with the Implementation Date, FPL's retail base rate revenues in excess of $3.400 billion up to $3.556 billion will be shared between FPL and its customers on a one-third/two-thirds basis, one-third to be retained by FPL and two-thirds to be refunded to its customers. Retail base rate revenues above $3.556 billion for the first 12-month period will be refunded to FPL's customers. For the second 12-month period, retail base rate revenues in excess of $3.450 billion up to $3.606 billion will be subject to the same one-third/two-thirds sharing between FPL and its customers. Retail base rate revenues above $3.606 billion for the second 12-month period will be refunded to FPL customers. For the third and final 12-month period, retail base rate revenues in excess of $3.500 billion up to $3.656 billion will be subject to the same one-third/two-thirds sharing between FPL and its customers. Retail base rate revenues above $3.656 billion for the third 12-month period will be refunded to FPL's customers. Because implementation of this Stipulation and

Settlement may not begin on the first day of a calendar month, the three resulting 12 month periods used to calculate potential refunds may each include two partial calendar months. Revenues for these two partial calendar months will be calculated by multiplying total revenues for the full calendar month by the ratio of days the Stipulation and Settlement is in effect in the partial calendar month, or days to complete the applicable twelve month period, as the case may be, to the total days in that calendar month.

All refunds will be paid with interest at the 30-day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code, to customers of record during the last three months of each applicable 12-month period based on their proportionate share of kWh usage for the 12-month period. For purposes of calculating interest only, it will be assumed that revenues to be refunded were collected evenly throughout the preceding 12-month period at the rate of one-twelfth per month. All refunds with interest will be in the form of a credit on the customers' bills beginning with the first day of the first billing cycle of the second month after the end of the applicable twelve month period. Refunds to former customers

will be completed as expeditiously as reasonably possible.

7. FPL's recovery of costs through the environmental cost recovery docket will be phased out over a three-year period beginning January 1, 2000. FPL will be allowed to recover its otherwise eligible and prudent environmental costs, including true-up amounts, in 2000 up to $12.8 million. For 2001, FPL will be allowed to recover its otherwise eligible and prudent environmental costs, including true-up amounts, up to $6.4 million. For 2002, FPL will not be allowed to recover any costs through the environmental cost recovery docket. FPL may, however, petition to recover in 2003 prudent environmental costs incurred after the expiration of the three-year term of this Stipulation and Settlement in 2002.

8. During the term of this Stipulation and Settlement, accruals for nuclear decommissioning and fossil dismantlement expense will be capped at the level previously approved by the Commission in Order No. PSC-95-1531-FOF-EI in Dockets Nos. 941350-EI and 941352-EI as amended by Order No. PSC-95-1531A-FOF-EI and Order No. PSC-95-1532-FOF-EI in Docket No. 941343-EI. In addition, the Protests or Petitions on Proposed Agency Action by FIPUG and the Coalition of Order No. PSC-99-0073-FOF-EI will

be withdrawn and that Order will be made final. Thereafter, depreciation rates as addressed in Order No. PSC-99-0073-FOF-EI will not be exceeded for the term of this Stipulation and Settlement.

9. The construction costs associated with the Ft. Myers and Sanford plant repowering projects will be treated as CWIP in rate base and AFUDC will not be accrued on these projects.

10. This Stipulation and Settlement is contingent on approval in its entirety by the Florida Public Service Commission. This Stipulation and Settlement will resolve all matters in this Docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (1997). This Docket will be closed effective on the date the Florida Public Service Commission Order approving this Stipulation and Settlement is final.

11. This Stipulation and Settlement, dated as of March 10, 1999, may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signature.

Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174

Steel Hector & Davis LLP

By:_____
By:_____
Matthew M. Childs, P.A.

Office of Public Counsel
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Jack Shreve

Florida Industrial
Power Users Group

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Davidson, Decker, Kaufman
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Tampa, FL 33601-3350

By:_____
John W. McWhirter

The Coalition for
Equitable Rates

Ronald C. LaFace, Esq.
Seann M. Frazier, Esq.
Greenberg, Traurig, P.A.
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Tallahassee, FL 32301

By:_____
Ronald C. LaFace

APPENDIX B

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 1999

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number	Exact name of Registrants as specified in their charters, address of principal executive offices and Registrants' telephone number
1-8841	FPL GROUP, INC.
1-3545	FLORIDA POWER & LIGHT COMPANY

700 Universe Boulevard
Juno Beach, Florida 33408
(561) 694-4000

State or other jurisdiction of incorporation or organization: Florida

	Name of exchange on which registered
Securities registered pursuant to Section 12(b) of the Act:	
FPL Group, Inc.: Common Stock, $0.01 Par Value and Preferred Share Purchase Rights	New York Stock Exchange
Florida Power & Light Company: None	

Securities registered pursuant to Section 12(g) of the Act:
FPL Group, Inc.: None
Florida Power & Light Company: Preferred Stock, $100 Par Value

Indicate by check mark whether the registrants (1) have filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months and (2) have been subject to such filing requirements for the past 90 days. Yes X No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrants' knowledge in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [X]

Aggregate market value of the voting stock of FPL Group, Inc. held by non-affiliates as of January 31, 2000 (based on the closing market price on the Composite Tape on January 31, 2000) was $7,495,697,770 (determined by

electric service (rate base). The rate of return on rate base approximates FPL's weighted cost of capital, which includes its costs for debt and preferred stock and an allowed ROE. The FPSC monitors FPL's ROE through a surveillance report that is filed monthly by FPL with the FPSC. The FPSC does not provide assurance that the allowed ROE will be achieved. Base rates are determined in rate proceedings which occur at irregular intervals at the initiative of FPL, the FPSC, Public Counsel or a substantially affected party.

FPL's last full rate proceeding was in 1984. In 1990, FPL's base rates were reduced following a change in federal income tax rates. In 1999, the FPSC approved a three-year agreement among FPL, Public Counsel, FIPUG and Coalition regarding FPL's retail base rates, authorized regulatory ROE, capital structure and other matters. The agreement, which became effective April 15, 1999, provides for a $350 million reduction in annual revenues from retail base operations allocated to all customers on a cents-per-kilowatt-hour basis. Additionally, the agreement sets forth a revenue sharing mechanism for each of the twelve-month periods covered by the agreement, whereby revenues from retail base operations in excess of a stated threshold will be shared on the basis of two-thirds refunded to retail customers and one-third retained by FPL. Revenues from retail base operations in excess of a second threshold will be refunded 100% to retail customers.

The thresholds are as follows:

	Twelve Months Ended April 14,		
	2000	2001	2002
		(millions)	
Threshold to refund 66 2/3% to customers	$3,400	$3,450	$3,500
Threshold to refund 100% to customers	$3,556	$3,606	$3,656

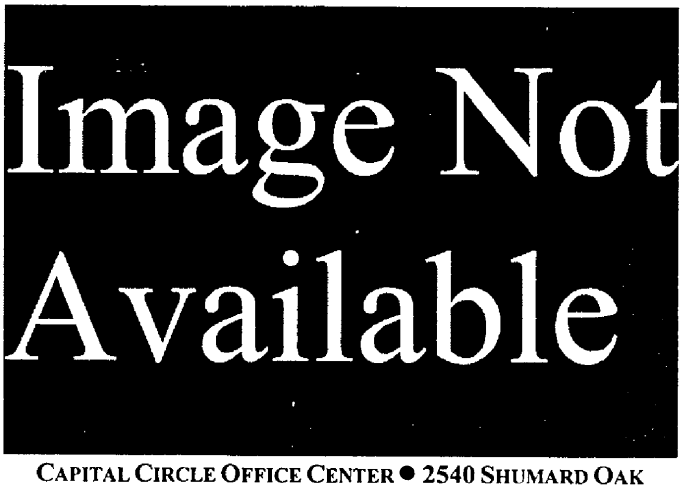
Offsetting the annual revenue reduction will be lower special depreciation. The agreement allows for special depreciation of up to $100 million, at FPL's discretion, in each year of the three-year agreement period to be applied to nuclear and/or fossil generating assets. Under this new depreciation program, FPL recorded approximately $70 million of special depreciation in 1999. The new depreciation program replaced a revenue-based special amortization program whereby special amortization in the amount of $63 million, $378 million and $199 million was recorded in 1999, 1998 and 1997 respectively.

In addition, the agreement lowered FPL's authorized regulatory ROE range to 10% - 12% from 11% - 13%. During the term of the agreement, the achieved ROE may from time to time be outside the authorized range, and the revenue sharing mechanism described above is specified to be the appropriate and exclusive mechanism to address that circumstance. For purposes of calculating ROE, the agreement establishes a cap on FPL's adjusted equity ratio of 55.83%. The adjusted equity ratio reflects a discounted amount for off-balance sheet obligations under certain long-term purchased power contracts. Finally, included in the agreement are provisions which limit depreciation rates, and accruals for nuclear decommissioning and fossil dismantlement costs, to currently approved levels and limit amounts recoverable under the environmental clause during the term of the agreement.

The agreement states that Public Counsel, FIPUG and Coalition will neither seek nor support any additional base rate reductions during the three-year term of the agreement unless such reduction is initiated by FPL. Further, FPL agreed to not petition for any base rate increases that would take

APPENDIX C

State of Florida



CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: MARCH 15, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS (SLEMKEWICZ, D. DRAPER, LEE, LESTER, MAILHOT, MAUREY, DEVLIN, SALAK)
DIVISION OF ELECTRIC AND GAS (BREMAN, TEW, WHEELER)
DIVISION OF LEGAL SERVICES (ELIAS)

RE: DOCKET NO. 990067-EI - PETITION BY THE CITIZENS OF THE STATE OF FLORIDA FOR A FULL REVENUE REQUIREMENTS RATE CASE FOR FLORIDA POWER & LIGHT COMPANY.

AGENDA: 03/16/99 - REGULAR AGENDA - DECISION ON STIPULATION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\AFA\WP\990067.RCM

CASE BACKGROUND

On January 20, 1999, the Office of Public Counsel (OPC) filed a Petition to "have the Florida Public Service Commission

conduct a full revenue requirements rate case and establish reasonable rates and charges for FPL."

On March 10, 1999, the parties filed a Joint Motion for Approval of Stipulation and Settlement together with the Stipulation and Settlement (Stipulation) in the above-referenced docket that resolves the issues raised. This recommendation addresses the Stipulation and Settlement agreed upon by the parties.

> carried out. As a result, we may not bind the Commission to take or forego action in derogation of our statutory obligations.

See Order No. 22352, issued December 29, 1989.

> The parties are without authority to confer or preclude our exercise of jurisdiction by agreement. In our view, any such provisions in the Settlement are not fatal flaws; they are simply unenforceable against the Commission and are void ab initio. The parties cannot give away or obtain that for which they have no authority. We note that, consistent with our discussion above, the parties commented during our agenda conference that there was no intent to restrict in any fashion the Commission's responsibility or legal authority.
>
> While it is clear that we cannot be precluded from carrying out our statutory mandate by approving this Stipulation, we also understand that should we find it necessary in the future to alter the regulatory provisions we are now approving, such changes could be the basis for a party to the Settlement to abrogate the prospective portions of the agreement.

Order No. PSC-94-0172-FOF-EI at pages 5, 6.

The situation addressed by the Commission in Order No. 940172 is analogous to that confronting the Commission in this docket. The stipulation binds the parties, and not the Commission. The Commission remains able to utilize during the term of the agreement, all powers explicitly and impliedly granted by Chapter 366, Florida Statutes. This includes the ability to determine that the rates charged by FPL are no longer fair, just, and reasonable, and to change those rates. This also includes the ability to order an interim change in rates. Given that this stipulation does not limit the Commission's ability to exercise its jurisdiction to the fullest extent, and does not violate any specific provision of Chapter 366, it is consistent with the requirements of Chapter 366. (Elias)

6. **Sharing**

Section 6 of the Stipulation requires the sharing of FPL's retail base rate revenues in excess of a certain amount each

APPENDIX D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Petition by The Citizens of the State of Florida for a full revenue requirements rate case for Florida Power & Light Company.

DOCKET NO. 990067-EI

BEFORE:	CHAIRMAN JOE GARCIA COMMISSIONER J. TERRY DEASON COMMISSIONER SUSAN F. CLARK COMMISSIONER JULIA A. JOHNSON COMMISSIONER E. LEON JACOBS
PROCEEDING:	AGENDA CONFERENCE
ITEM NUMBER:	10A**
DATE:	March 16, 1999
PLACE:	4075 Esplanade Way, Room 148 Tallahassee, Florida

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(850) 561-5598

jurisdiction, no, but I'm saying when you exercise it now in approving it you are exercising your jurisdiction and saying you think that it is an appropriate settlement.

CHAIRMAN GARCIA: Correct.

MR. ELIAS: And if I could just quote through --

CHAIRMAN GARCIA: Mr. Elias, excuse me for a second. Mr. Shreve had asked to speak.

MR. SHREVE: Mr. Elias said that we're determining what is fair and reasonable rates by a revenue mechanism. The revenue mechanism is determining the possibility of a refund that in a rate case you would not have. The company has given us that safety net, so to speak. That is now on a revenue basis, and the reason it's on a revenue basis is because in the past we have put in some language that said the issues would be the same as in the last rate case.

We did that in the Tampa Electric settlement, and the staff said, well, no, that's not really what you meant when you said that. So now we're taking away that and we're not going to lose that benefit for the customers anymore. We're saying above a certain amount of revenue there is a refund available. We have also put in here a range of 10 to 12 with a

midpoint of 11, which is lower than the staff of the Public Service Commission agreed to with Florida Power & Light. That range is for all purposes. We have determined what the rates are under this and we under this settlement cannot change what your authority is. We went through the same thing with the Florida Power settlement. We can bind ourselves, but we're not trying to change what your authority is. If you have it, you have it; if you don't, you don't.

CHAIRMAN GARCIA: I don't think anyone disagrees with that, Mr. Elias, and I don't think you do, either.

MR. ELIAS: Good.

CHAIRMAN GARCIA: With that said, we have a motion and a second by Commissioner Clark.

COMMISSIONER CLARK: Mr. Chairman, I would indicate that I really can't add anything beyond what Commissioner Deason said, only that I don't think I would like to negotiate with Mr. Shreve under any circumstances.

MR. CHILDS: Mr. Chairman, the approval though should just be a simple approval of the settlement, not going into a forty page discourse from staff.

COMMISSIONER DEASON: Let me clarify my motion, okay? I did technically move approval of the primary.

Maybe I misspoke. I want to approve the stipulation and the stipulation provides what the stipulation provides. Our jurisdiction is what our jurisdiction is, okay? And we're not giving up any of our jurisdiction, in my opinion. We can't. I mean, our jurisdiction is what it is by law and we can't, you know, change that.

But I wanted it understood that my motion tried to include the clarification that we discussed here today, and I guess that's when I said move primary. I'm willing to move approval of the stipulation consistent with the discussion that has taken place here today.

CHAIRMAN GARCIA: And I think the parties openly said that clearly if there was any discussion on these issues this is the forum --

COMMISSIONER DEASON: And that's the clarification I want to make sure is that as I indicated earlier, no matter how well-crafted a stipulation is, or an order from this Commission, whatever, in the future there may be a question and that this Commission is going to ultimately have to decide that interpretation if it comes to that. Hopefully, everything will go so smoothly there is no controversy whatsoever. But in the event that there

is, that's still resides with the Commission.

CHAIRMAN GARCIA: All right. We have a motion and Commissioner Clark agrees with that, and seconds it --

COMMISSIONER JACOBS: One very brief point. I would be interested in hearing from staff and from the parties to contact -- not today, but I'll be interested in understanding the extent which we can look at doing a cost of service study outside of a rate case.

CHAIRMAN GARCIA: Okay. Commissioner Johnson, did you want to say anything before we call the vote?

COMMISSIONER JOHNSON: I agree with all the comments made by Commissioner Deason. In the first instance, I was prepared to move staff with the clarifications that they were suggesting that we do upfront, but understanding that we have continuing jurisdiction. To the extent that there is ambiguity that needs to be resolved, I'm sure it will be back before us. With that, I'm in favor of the motion.

CHAIRMAN GARCIA: Very good. I'm going to move -- I'm going to vote with Commissioner Deason on this. I want to again express -- first of all, I want to commend staff. I think today that the message unfortunately wasn't as clear as it should have been