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August 7, 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 the Answer of South Florida Hospital and Healthcare Association, *et al.* to Florida Power & Light Company's Response in the subject docket. 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. A copy of this response is being sent by FedEx to counsel for Florida Power & Light.

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

Very truly yours,

Mark F. Sundback
An Attorney For South Florida Hospital & Healthcare Association and the Hospitals

Enclosures
cc: Parties of record

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

WAS:88751.1

BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION

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

ANSWER OF SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION TO FLORIDA POWER & LIGHT COMPANY'S RESPONSE

South Florida Hospital and Healthcare Association ("SFHHA" or the "Association") and the individual hospitals listed in their May 2, 2001 intervention filed in this docket (the "Hospitals") hereby answer the "Response of Florida Power & Light Company" filed in this docket ("FP&L's Response"), in which FP&L opposes further clarification or reconsideration of Order No. PSC-01-1346-PCO-EI issued June 19, 2001. The arguments in FP&L's Response are without merit, for the reasons described below.

I.
SUMMARY

The arguments contained in FP&L's Response contains a series of highly selective quotations and references, often more significant for what has been omitted than for what FP&L has included. For instance, FP&L's Response fails to acknowledge that FP&L agreed that SFHHA could intervene here on behalf of its members paying FP&L's rates; instead, FP&L contends it "opposed" the Association's intervention, a contention it now makes in an effort to procedurally derail substantive review of FP&L's excessive rates. Moreover, FP&L argues that a Stipulation entered into in 1999 between FP&L and three other signatories (the "Stipulation"), which expressly stated that three of the four named signatories were barred from seeking to reduce FP&L base rates for a three year period, effectively means *all*

ratepayers of FP&L are barred from seeking a reduction. FP&L fails to note the careful use of language in the Stipulation, as well as the Commission's own reluctance to embrace comprehensive relinquishment of non-parties' rights. FP&L fails to recognize that its arguments concerning the scope of the signatories' representations would create serious issues under the existing statutory framework. In fact, FP&L's Response fails to cite the operative language defining the scope of authority of the entity signing the Stipulation, which entity FP&L incorrectly argues represented the Hospitals and the Association. For these reasons, as more fully explained below, the FP&L Response is without merit.

II.
FP&L'S ARGUMENT REGARDING THE HOSPITALS' STATUS IS PREMISED ON IMPORTANT OMISSIONS OF FACT

FP&L attempts to avoid inquiry regarding its over-earnings by arguing that SFHHA is not a party to this proceeding and thus procedurally the Commission should not consider SFHHA's request for clarification or reconsideration of the June 19, 2001 Order. Unfortunately, FP&L's arguments on this score (like its arguments concerning the Stipulation, described below) are highly selective and misleading.

FP&L states that "FP&L timely opposed their [*i.e.*, the Hospitals'] petition" to intervene in this docket, FP&L Response, p.2, and on that basis challenges the Hospitals' standing to seek clarification or reconsideration. In fact, FP&L did *not* oppose the intervention of the enumerated individual hospitals at all. Further, with respect to SFHHA itself, FP&L stated that if the Association's members are FP&L retail electric customers (which FP&L has not contested and cannot contest), then "FP&L *does not oppose* SFHHA's

intervention to represent its members as retail electric customers."[1] The only unconditional "opposition" advanced by FP&L was a challenge to the scope of issues raised by SFHHA, and the Commission's direction of MFRs for FP&L clearly indicates SFHHA's proposed scope of issues was very reasonable. In any event, no participant has opposed party status either for the individual institutions or for the Association acting as representative for the named FP&L customers that are hospitals.[2] Thus, FP&L's contention that it "opposed" the intervention, at best, creates a mis-impression. One would like to think that FP&L's statement on this score was inadvertent or constituted the careless use of language, but, unfortunately, it is symptomatic of FP&L's entire pleading.

III.
CLARIFICATION OR RECONSIDERATION OF ORDER NO. PSC-01-1346-PCO-EI IS WARRANTED

FP&L states that clarification of the scope of the Commission's Order No. PSC-01-1346-PCO-EI is unnecessary. Clarification is warranted, however, for a number of reasons.

First, at the time Order No. PSC-01-1346-PCO-EI was issued, there was no pending request by a customer to reduce FP&L's rates, especially a request from a customer not a signatory to the Stipulation. Now there is. Order No. PSC-01-1346-PCO-EI therefore was issued in a different procedural context than that now in effect. Thus, FP&L's implicit contention, that the Commission must have considered the Hospitals' request for rate relief

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1 "Florida Power & Light Company's Response In Opposition To Petition To Intervene of South Florida Hospital and Healthcare Association," Docket No. 001148-EI (May 9, 2001), ¶ 1, p.1 (emphasis added).

2 *Cf.* "Order Granting Motion For Leave To File Amended Petition To Intervene and Granting in Part and Denying In Part Amended Petition To Intervene," Docket No. 001148-EI (March 14, 2001) p.3 (in which the Commission noted the standard for intervenor status and distinguished between interests of a competitor (which were not sufficient to warrant intervention here) and of a retail customer).

that had not even been filed as of the date Order No. PSC-01-1346-PCO-EI was issued, is in error.

Second, FP&L's claim that there are no changes in circumstance that would warrant reconsideration conflicts with additional facts. For instance, the proposal to allow in a restructured market utilities to transfer their generation assets (at net book value) to marketing affiliates whose rates would not be set by the Commission, means that the depreciation acceleration provisions of the Stipulation are not fair and reasonable. Instead, that feature of the Stipulation would grant FP&L's owners a windfall, to the tune of hundreds of millions of dollars (*see* Complaint in Docket No. 01-0944-EI, ¶¶ 5 and 6 (a copy of pertinent portions of the Complaint are attached hereto)). Moreover, no one could have foretold that FP&L would have expended tens of millions of dollars on a failed merger attempt that FP&L itself now admits would not have provided the advantages that FP&L originally (and apparently erroneously) anticipated (Complaint, ¶ 7), much less that FP&L would adopt a plan to pay certain employees a bonus if the merger *failed* (Complaint, *id.*). Further, the Stipulation suggested that FP&L might over-earn the authorized level "from time to time," not essentially all of the time, as has occurred (Order No. PSC-01-1346-PCO-EI, slip op. at p.3). These facts could not reasonably have been anticipated in 1999.

IV.
THE TERMS OF THE STIPULATION NEED NOT BE MODIFIED, ONLY HONORED

In any event, the Stipulation's terms need not be disturbed if the Commission decides that is appropriate. The Stipulation's provisions, as the signatories[3] agreed and bound

[3] *I.e.*, FP&L, the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG") and the Coalition for Equitable Rates (the "Coalition").

themselves by such terms, can be honored. Consistent with the *parties*' ability to act and the clear limits carefully woven into the Stipulation, Order No. PSC-01-1346-PCO-EI notes that the Stipulation's revenue-sharing plan was "the *parties*' 'exclusive mechanism' to address any excessive earnings that might occur" (slip op. at p. 6, emphasis added).

This point is well-illustrated by the Staff Memorandum involving the 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 to the SFHHA, *et al.* July 5, 2001 pleading in this docket). 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 to the SFHHA, *et al.* July 5, 2001 pleading in this docket)). 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 (*id.*)).

FP&L has had more than two years of operations at current rate levels, and clearly has over-earned. But FP&L cannot transform the Stipulation into something that by the Stipulation's terms it was not. What FP&L did not do, in drafting the Stipulation, was to foreclose the rights of customers not represented by the signatories to rate relief, as a reading of the Stipulation reveals. The Stipulation *does* repeatedly use the term "customers" (*see*

e.g., fourth "Whereas" clause); but the Stipulation conspicuously does not further provide that "*customers*" are forbidden from seeking reductions in FP&L's rates. Instead, the Stipulation specifies that only the three non-FP&L signatories—"OPC, FIPUG and the Coalition" – are barred from seeking reductions in FP&L's rates (Article 5). Of course, if a broader restriction (such as now advocated by FP&L) had been intended, then it could have been expressed quite easily by using the same term – "customers" – that FP&L had used elsewhere in the Stipulation. FP&L now seeks to alter the Stipulation to say what the text originally did not say and which the Commission when approving the Stipulation declined to say.

Expanding on this theme, FP&L also argues that the Hospitals or the Association should have appealed the Order in which the Stipulation was reviewed (FP&L Response at pp. 6-7). This contention simply is a variant of the presumption that the Stipulation did something other than what the Stipulation's language expressly states, namely limit OPC, FIPUG, and the Coalition from seeking reductions to FP&L's rates. Of course, because the Hospitals were not one of the "Parties" to the Stipulation, nor were they one of the parties prohibited (under the carefully-negotiated and crafted language of the Stipulation) from seeking rate relief, there was no reason to seek judicial review of the Stipulation in 1999. Indeed, as the Commission noted in the June 19, 2001 Order, "we are not a party bound by . . . terms of the Stipulation" (slip op. at p.6).

The Stipulation must be taken at its face value as an agreement among named participants on behalf of those they are duly authorized to represent.

V.
THE ARGUMENT THAT THE FOUR SIGNATORIES TO THE STIPULATION REPRESENTED THE HOSPITALS IS INCORRECT

In a scattershot fashion, FP&L argues that "[s]ome or all" of the Stipulation signatories aside from FP&L represented the Hospitals (FP&L Response at p.8), and thus the Hospitals now are estopped from speaking for themselves. FP&L's palpable anxiety to avoid review of the prudence of many of its extraordinary expenditures, and its excessive earnings, leads FP&L to irrational arguments. FP&L's own contentions demonstrate the errors associated with this contention.

First, FP&L argues that the OPC represented "every . . . FPL retail customer" (FPL Response, p.9). Whatever the merits of such an argument generally, in this context FP&L's assertion on its face is nonsense. If OPC represented all who would pay FP&L's retail rates, there would have been no need or perhaps even standing for the industrials (through the FIPUG) to be represented separately, or for the Coalition to have become involved, much less to have separately signed the Stipulation. Instead, under FP&L's version of the world, only OPC should be involved in FP&L's rate case, because OPC represents all ratepayers. As is clear from experience, however, not only does the industrial customer group regularly have standing in retail electric cases before the Commission, but so does the Coalition (whoever or whatever it represented). Thus, FP&L's assertion makes no sense in the context of the Stipulation.

FP&L's assertions concerning the estoppel effects of OPC's participation also are inconsistent with the statutory language under which OPC and the Commission operate. Unfortunately, FP&L's pleading did not contain a careful review of the pertinent statutory

language which defines OPC's duties and establishes the scope of participants' rights. If FP&L had done so, it would have revealed that FP&L's arguments are in error.

The very first sentence of Section 350.0611, describing the OPC's "duties and powers," charges OPC with providing "legal representation for *the people of the state*" (emphasis added), and OPC is permitted to file in the name of the state or its citizens, Section 350.0611(1). For starters, hospitals and like entities are not "people." They may constitute "persons" for various purposes, but that is not the language used to establish the OPC's authority.

Notwithstanding the actual grant of authority to OPC, FP&L instead would have the statute read that the OPC provides legal representation to all customers, ratepayers, users or consumers. But the statute does not contain such a statement. Of course, other statutory provisions governing the Commission's processes and authority frequently *do* speak in terms of "customers"[4] or "consumers and users,"[5] or "subscribers" to a service.[6] The statute also uses the term "ratepayers"[7] on a number of occasions. Provisions using the comprehensive terms "users" or "consumers" specify, *inter alia,* the *Commission's* authority to set terms and conditions of service.[8] Thus, when the Legislature wanted to identify all who pay Commission-regulated rates to the utility, or all who are users of utility services, the Legislature readily and repeatedly did so. But the foregoing, comprehensive descriptors of

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[4] *See e.g.*, §§ 366.06(1), (3).

[5] *See e.g.*, §§ 366.05(4),(5).

[6] *See e.g.*, § 366.041(1). The statutory grants to the Commission also speak of "persons" or a "person." *See e.g.*, §§ 366.03; 366.031(2), (3).

[7] *See e.g.*, §§ 366.093(1), (3); 366.05(1).

[8] *See e.g.*, §§ 366.05(4), (5) (setting fees for meter reading); 366.06(3) (Commission may order refunds to "customers"); *see also* § 366.06(1) (discussing "various classes of customers").

entities taking or paying for service from a utility are *not* used in the section defining OPC's duties and powers.

In other words, the governing statutory provisions demonstrate that OPC is engaged in representing a universe of clients other than all "users" or "consumers" or "ratepayers," as effectively claimed by FP&L. To adopt FP&L's position would do violence to the statutory framework under which the Commission operates, and would ignore critical distinctions in statutory language.

Moreover, FP&L's position, that OPC speaks for "every . . . FP&L retail customer" or ratepayer (substituting language FP&L would have desired in lieu of the actual statutory language), would place OPC in challenging ethical terrain in this context. The high regard with which OPC is held by all involved in litigation would be impossible to be maintained if FP&L's interpretation were to be adopted.

The Florida Rules of Professional Conduct provide that a lawyer may not represent a client if the lawyer's exercise of professional judgment on behalf of that client could be materially limited by the lawyer's responsibilities to another client, absent client consent after consultation (Rule 4-1.7(b)). Further, Rule 4-1.2 of the Florida Rules of Professional Conduct provide that a "lawyer shall . . . consult with the client as to the means by which [objectives of representation] are to be pursued" (Rule 4-01.2(a)) and "may limit the objectives of the representation if the client consents after consultation" (Rule 4-1.2(c)).

Of course, in proceedings before the Commission, different classes of customers have widely differing interests. Some customers may desire to have refunds distributed on the basis of usage, rather than through a reduction in demand charges. Interruptible customers have strongly divergent perspectives from firm service customers on rate design and the

value of continuity of service. Some customer classes place a value on reliable service that differs from customer classes that are more sensitive to rate levels. Indeed, as the June 19, 2001 Order states, since FP&L's last fully allocated cost of service study, "cost shifting among rate classes has occurred." PSC-01-1346-PCO-EI, slip op. at p. 4. Whether and to what extent the detrimentally-affected classes would consent to deferring the issue of "cost shifting among rate classes" to another day is a matter that could be determined following a lawyer's consultation, not in the absence of consultation.

This reality is recognized on the face of the relevant statutory provisions. For instance, Section 366.06(1) discusses the need to fix the "fair, just and reasonable rates for *each* customer class" (emphasis added) with an eye to, *inter alia* "the consumption and load characteristics of the various classes of customers . . . ." Thus, the statutory framework itself recognizes different rates and rate structures may be appropriate for each customer class, based upon circumstances that differ radically among classes (*e.g.*, "consumption and load"). It is hard to see how the differing interests of such classes can be represented effectively by a single advocate, much less one that may not be able to obtain consent to a common position among the divergent interest groups, in circumstances involving the Stipulation.

Given the fact that Florida rate classes have highly divergent perspectives on issues now under consideration, FP&L's contention that OPC represents "every . . . FPL retail customer" (FPL Response at p.9), would place the OPC in a difficult position ethically, since the joint representation of clients with divergent interests requires, at very least, consultation and consent on, for instance, whether the "cost shifting" issues should be deferred. Of course, if FP&L's position here were to be adopted, and OPC were to become hamstrung in

effectively opposing FP&L even on behalf of residential ratepayers because ethical obligations made that impossible, FP&L might not be completely disappointed.

Moreover, perhaps sensing that this argument is obviously deficient, FP&L stretches further, arguing that *someone* signing the Stipulation must have estopped the hospitals[9] here seeking relief. FP&L speculates that the Coalition may have represented the hospitals. However, none of the hospitals supporting this effort were represented by, or supported, the Coalition participating in the Stipulation. FP&L has not shown otherwise. Whoever or whatever the Coalition represented, it was not the Hospitals herein.[10] FP&L's effort to make some group, without a comprehensive identification as to its members, the representative of a series of significant and specifically-identified customers, is outrageous.

The Stipulation clearly was the result of significant legal drafting and review. Unfortunately for FP&L, the Stipulation does not say what FP&L now would like the Stipulation to say. If all ratepayers were to forego their rights to obtain potential reductions to rates under the Stipulation, then the Stipulation should have specified that and affected customers could have received notice of that fact and acted accordingly. Alternatively, the Stipulation easily could have made receipt by a customer of rate treatments contingent on the customer's agreement not to seek to reduce rates. The Stipulation instead specifies the limited universe of participants agreeing to its terms, and FP&L, as a prime drafter of the Stipulation, should not be permitted after the fact to attempt to expand the Stipulation's carefully selected language.

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[9] FPL Response, p.9 n.2.

[10] The Coalition, to the extent it disclosed its supporters, referenced *nursing homes*. Of course, the electricity consumption levels, patterns and applicable rate schedules for a 90-bed nursing home are radically different than those of a 900-bed acute care hospital

FP&L further argues that allowing rate reductions as requested by the Hospitals would be against the public interest. In part, FP&L relies upon a determination that approval of the Stipulation originally was in the "public interest." This point is easily rebutted: the fact that the Stipulation precluded only a limited universe (*i.e.*, the signatories) from seeking a rate reduction was an argument why the Stipulation was in the public interest; FP&L's effort at this late date to transform the carefully-drafted limit on rate reduction opportunities into a blanket preclusion is contrary to the public interest.

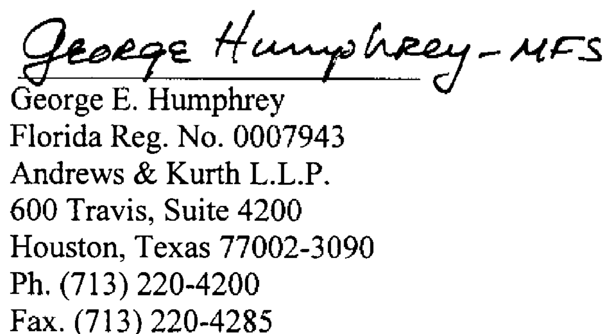
Indeed, the public interest is poorly served where the scope of specifically-crafted, focused language of a Stipulation is claimed by participant two years after the fact to bind entities not signing the Stipulation. It would have been a simple matter to draft the Stipulation in the manner that FP&L now contends the Stipulation should have read. FP&L argues that the Stipulation will not be "honored" by the request here at issue, but that claim simply goes back to FP&L's circular position that "some or all of [the] signatories [to the Stipulation] represented the Hospitals' interests" (FP&L Response, p.8) and thus any effort to vindicate statutory rights somehow is bad public policy. FP&L's citation to cases in which an agency has entered into an agreement is inapposite, since as the June 19, 2001 Order recognizes, the Commission is not a party to the Stipulation (and the Hospitals and SFHHA similarly are not parties); moreover, the Stipulation as drafted clearly can continue to be honored among the signatories (not renounced) while the relief herein requested is granted.

FP&L further argues that allowing a non-signatory to the Stipulation to seek rate reductions would be against the public interest. The corollary to such an argument, presumably, is that allowing FP&L to spend $60 million on a failed merger, including giving a single individual $30 million, promotes the public interest. FP&L misreads the public's

reaction to this development. The public interest was not well-served by its attempted merger misadventures, and its cavalier indifference to the prudence of its activities has provoked a remarkable level of ratepayer concern about what type of behavior is occurring at FP&L. Bad public policy will be made if FP&L is able to overcollect from consumer groups *not* represented in the drafting of the Stipulation, when those consumers seek to vindicate their statutory rights.

VI.
CONCLUSION

WHEREFORE, the Hospitals and SFHHA request that the Commission find FP&L's Response to be without merit, and provide the relief requested in their July 5, 2001 filing herein.



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Attorneys for the Hospitals and SFHHA

August 6, 2001

CERTIFICATE OF SERVICE
DOCKET NO. 001148-EI

I HERBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following parties, this 7th day of August, 2001.

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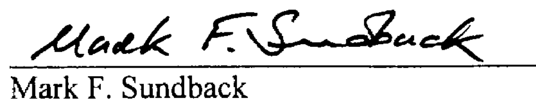

Mark F. Sundback

WAS:88675.1

BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION

In re: Complaint of South Florida Hospital and Healthcare Association, *et. al.* against Florida Power & Light Company, request for expeditious relief and request for interim rate procedures with rates subject to bond	§ § § § § §	**Docket No. ________**

COMPLAINT OF SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION, *ET AL.* AGAINST FLORIDA POWER & LIGHT COMPANY, REQUEST FOR EXPEDITIOUS RELIEF, AND REQUEST FOR INTERIM RATE PROCEDURES WITH RATES SUBJECT TO BOND

South Florida Hospital and Healthcare Association ("SFHHA") and individual healthcare facilities supporting this effort as identified in Docket No. 001148-EI (collectively with the SFHHA, the "Hospitals"), by and through their undersigned counsel, and pursuant to Sections 366.03, 366.05, 366.06, 366.07 and 366.71, Florida Statutes and Rule 25-22.036 of the Florida Administrative Code, hereby file the instant complaint against Florida Power & Light Company ("FP&L" or the "Company"). The Hospitals respectfully request that rates charged by FP&L be reduced to a level that is "fair and reasonable" level under interim procedures established under Section 366.071, and that interest accrue on any refunds pending a final determination of issues addressed in the instant complaint. The Company and the Commission have assembled a solid record conclusively demonstrating that FP&L is over-earning; the Hospitals believe that relief requested herein is mandated by Florida law.

5. Moreover, FP&L's earnings have been reduced by its decision to accelerate depreciation to the tune of $70 million in Fiscal Year 1999, and $101 million in Fiscal Year 2000. FP&L FERC Form No. 1 for 2000, p. 123.2 (*see* Appendix E hereto). Accelerated depreciation is not warranted given what we now know. Collecting accelerated depreciation may have made sense when, prior to recent experience, it was anticipated that in a deregulated, restructured electric industry, power prices would be below historical cost-based rates. In such an environment, utilities with significant net generation plant balances could be exposed to large stranded costs, prompting huge claims against ratepayers; paying down the balance through accelerated depreciation could be argued to be a reasonable mitigation strategy.

6. But we know now (based, for instance, on the California experience) that power price deregulation can lead to *increased*, not decreased, electricity prices, which means that a utility with a largely depreciated generation plant has a valuable asset, rather than a costly burden. Of particular concern to Florida's ratepayers is the plan to allow the State's utilities to transfer their generation plants to affiliates at only net book value (*see* Appendix F hereto). This would confer windfalls on the utilities' affiliates when power produced by the plants is sold at deregulated prices. In effect, what would happen is that FP&L is able to shelter excessive earnings by attributing such revenues to accelerated, voluntarily-implemented "depreciation", which significantly drives down net book value, and then transfer the facility to its affiliate at a firesale price reflecting the effects of that accelerated depreciation. Ratepayers in that case will have subsidized FP&L to the tune of hundreds of millions of dollars (by lowering the capital that would have to be recovered by the FP&L affiliate from revenues in the deregulated power market) and given FP&L affiliates an artificial competitive benefit over other potential power

merchants. In other words, FP&L's voluntary decision to accelerate depreciation is not a sound policy reason for keeping FP&L's rates too high; it represents a decision to take what are now, in reality, excessive earnings and under a book-keeping fiction (*i.e.*, accelerated depreciation) ultimately transfer such excessive earnings to FP&L affiliates. Under these circumstances, accelerated depreciation will primarily benefit FP&L shareholders, and since such acceleration is not necessary, the amounts are not prudently accrued at this time. It would be an unpleasant moment for Florida ratepayers to discover that they had paid down on an accelerated schedule the cost basis of plants that are transferred at below market value to enhance the profitability of FP&L affiliates. Alternatively, if FP&L is to be permitted to accelerate depreciation now, it should be obligated to agree that it will credit to ratepayers the difference between market value and net book value of generation plants it now owns when power prices are deregulated or the Florida electric industry is restructured.

7. FP&L has attributed to costs, not earnings, revenues to cover millions of dollars associated with executives' golden parachutes, and a total of $62 million, triggered by the failed attempt to merge with Entergy (*see* Appendix G hereto, pp. 4, 6 thereof), which revenue, if properly attributed to earnings, would raise the ROE level more than 50 basis points. The prudence of incurring such costs is called into question when FP&L itself admits that the merger "would not achieve the synergies or create the shareholder value originally contemplated" (FPL Group 2000 Annual Report, p. 23 which is the sixth page of Appendix G hereto). The Form 10-K discloses that the failed merger helped produce payouts and other compensation in excess of $30 million to a

single individual[1] (contained in Appendix G hereto, pp. 2-3). Moreover, given that an "Employee Retention Bonus Plan" established in November, 2000, entitles "certain employees" to an additional 25% retention bonus if the merger has been *terminated* ("Employee Retention Bonus Plan," Section 7) (excerpts of which are contained in Appendix H hereto) -- an event that occurred in the second quarter of 2001, outside the chronological period covered by the 2000 Form 10-K -- it is unlikely the foregoing compensation data represent the full scope of compensation that will have to be paid because of the failed merger. FP&L payments to employees of a 25% bonus because of the *failure* of the merger are imprudent and should not be cognizable expenses for purposes of establishing retail rates. Such remarkable numbers merit, at a minimum, scrutiny so that consumers have some assurance that when costs of this type are attributed to their service, they understand exactly how a failed merger, which FP&L belatedly discovered "would not achieve . . . synergies . . . originally contemplated," has provided value to them.

8. FP&L lowers its calculation of earned return by further including an estimate of more than $87 million in "potential" retail refunds. *See* April 12, 2001 letter from FP&L covering its February 2001 earnings report (contained in Appendix C hereto).

9. In other words, while the earnings surveillance reports demonstrate that FP&L is over-earning, they under-state the full dimensions of FP&L's earnings. But even without challenging these items, FP&L's own reports show that the Company is earning in excess of the maximum authorized return on equity.

[1] Compensating an executive of a company for take-over risk in a situation triggered by that company's own decision to merge, when under the terms of the merger, the affected executive will become CEO of a much larger post-merger organization with a majority of the Board derived from the executive's organization, raises serious questions regarding the prudence of such expenditures and of the terms of any compensation arrangement producing such a result.