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August 8, 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: *Response of South Florida Hospital and Healthcare Association, et. al. to Florida Power & Light Company's Motion to Dismiss Complaint*

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen (15) copies of the Response of South Florida Hospital and Healthcare Association, *et al.* to Florida Power & Light Company's Motion to Dismiss Complaint. 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 filing is being served upon Florida Power & Light Company via Federal Express.

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

APP ____
CAF ____
CMP ____
COM ____
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Enclosures

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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. 01-0944-EI**
		Date Filed August 8, 2001

RESPONSE OF SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION, *ET. AL.* TO FLORIDA POWER & LIGHT COMPANY'S MOTION TO DISMISS COMPLAINT

South Florida Hospital and Healthcare Association ("SFHHA" or the "Association") and individual hospitals supporting this effort referenced in the July 5, 2001 Complaint filed in this docket (the "Hospitals"), hereby answer and oppose the "Motion to Dismiss" of Florida Power & Light Company ("FP&L"). FP&L's Motion to Dismiss is without merit and should be denied, for the reasons described below.

I.

FP&L's Motion To Dismiss focuses on a number of what FP&L asserts are procedural deficiencies, as well as other procedural issues. FP&L's contentions on those items are addressed below. What is entirely missing from FP&l's pleading is any substantive response to the merits of the July 5, 2001 Complaint. FP&L does not, and cannot, contend that it is not overearning. The record is uncontested on many of the critical points which are demonstrated by FP&L's own written and verbal admissions, as well as material in the Commission's files and in the Commission's orders. FP&L's fallback argument is that FP&L should be saved from itself because in drafting the Stipulation, FP&L did not say what

it apparently now desires had been said. In fact, the relief requested in the Complaint can be provided without modifying a single provision of the Stipulation; in contrast, FP&L seeks to change the explicit and carefully-crafted claims-preclusion language from the Stipulation. Important policy considerations support reading the Stipulation as written, not as FP&L would have the Stipulation re-written.

II.
FP&L ERRS IN CLAIMING ALL MATTERS IN THE COMPLAINT WERE RESOLVED IN THE JUNE 19, 2001 ORDER, OR THAT THE COMPLAINT IS A COLLATERAL ATTACK ON THAT ORDER

FP&L argues that the Complaint should be dismissed because the issues raised in it "were all expressly considered by the Commission" in Order No. PSC-01-1346-PCO-EI ("June 19, 2001 Order"). FP&L Motion at pp. 5-6. This contention is in error.

To start with, FP&L's argument presumes that the Commission made a finding inconsistent with the evident care taken in the Order to distinguish between parties and non-parties.[1] FP&L presumes the June 19, 2001 Order was able to pass upon a circumstance not before the Commission, namely the request of a non-signatory to the Stipulation seeking to remedy what have been found by the Commission to be rates well in excess of any cost-based justification. FP&L's contentions also ignore the fact that the June 19, 2001 Order is subject to a pending request for clarification or reconsideration. Thus, FP&L is in error in asserting that the issues posed in the Complaint are resolved by the June 19, 2001 Order. What the June 19, 2001 Order *did* resolve – because FP&L did not seek reconsideration on this point – is that FP&L's earnings have "exceeded the maximum of its authorized ROE

[1] *E.g.*, "We are not a party bound by . . . terms" of the Stipulation, which provides that "the *parties'* 'exclusive mechanism' to address any excessive earnings" was a revenue sharing plan. Order No. PSC-01-1346-PCO-EI, slip op. at p. 6 (emphasis added).

range," Order No. PSC-01-1346-PCO-EI, slip op. at p. 3, which "is a conservative figure," *id.*

While the June 19, 2001 Order does a commendable job in cataloguing examples of FP&L's over-earning, that Order does not, for example, address:

- the opportunity FP&L now has, in its words, to implement "defensive strategies," particularly to defer expenses until the 2002 test year associated with the MFR, enhancing earnings in 2001 and artificially enhancing test year expenses in the MFR (see Complaint ¶ 23);
- the enormous increase (over $500 million) in the level of unrealized gains in special use funds, indicating that current levels of funding are too high (Complaint ¶ 11);
- FP&L's own admission that the failed Entergy merger would not have produced synergies that FP&L originally had hoped would arise from the merger, which raises serious questions about the prudence of costs associated with the merger (Complaint ¶ 7);
- FP&L's November 2000 plan to pay "certain employee" an additional 25% bonus if the merger *terminated* (Complaint ¶ 7); and
- the enormous potential windfall FP&L's owners can obtain if FP&L is allowed to continue to accelerate depreciation, and then transfer to an affiliate, during electric industry restructuring, generation facilities at the resulting artificially-reduced net book value level.[2]

In other words, issues involving hundreds of millions of dollars are raised in the Complaint which are not addressed in the June 19, 2001 Order.

Of course, FP&L would like to maintain that nothing new is at issue, in the hope that the effects of these items will not be recognized in rates as advocated in the Complaint; but that does not mean that the issues can or should disappear. FP&L's position on this score is wholly without merit.

[2] The June 19, 2001 Order does reference consequences under electric industry restructuring if, during a transition period, rates are frozen at an existing level, but that is a different issue than ratepayers' subsidization of FP&L generation affiliates should the latter receive assets at net book value established by artificially accelerated depreciation.

III.
FP&L'S POSITION CONFLICTS WITH THE TERMS OF THE CAREFULLY CRAFTED STIPULATION

Most of FP&L's arguments turn on the assertion (not the demonstration) that the Stipulation by its own terms prevented "every . . . FP&L retail customer" from seeking to reduce rates during a three-year period (*see* FP&L Motion, p.11). FP&L's latter-day selection of vocabulary to describe what it now would like the Stipulation to have said is revealing.

FP&L's arguments, in both this and its pleading in Docket No. 001148, meticulously avoid quoting the operative language of the Stipulation. The Stipulation was quite precise on this point:

> *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.[3] The Stipulation's prefatory language references "the Parties to this Stipulation," who are the entities that "stipulate and agree" to all of 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's signature page), which consists of the four entities identified in the Stipulation's preamble.

This stands in stark contrast to other portions of the Stipulation, which repeatedly used the term "customers" (the term FP&L now desires to insert in the definition of those precluded from seeking to reduce rates, contained in Article 5 of the Stipulation). While the

[3] OPC is the Office of Public Counsel; FIPUG represented certain industrial customers; and the Coalition was the Coalition For Equitable Rates.

Stipulation *does* repeatedly use the term "customers" (*see e.g.*, fourth "Whereas" clause), it conspicuously does not use the term "*customers*" when describing those who 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.

FP&L's failure to use the term "customers" in conjunction with the claims preclusion language is all the more telling in the context of Florida's statutory framework. The label "customers" is used in the statutory language governing the Commission's activities as a comprehensive descriptor of all who take service from the utility. 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 "customers," "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.

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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").

Given the significance of this term of art, FP&L's decision in drafting the Stipulation *not* to specify that "every . . . customer" was estopped from seeking relief from excessive rates was especially significant. That FP&L decided not to insist on such a provision at the time is a matter of FP&L's own choosing; what should not be consigned to FP&L's discretion now, however, is the option to expand the written and approved terms of the Stipulation.

Instead, FP&L claims that OPC represented the Hospitals, and indeed "every . . . FP&L retail customer," in negotiating the Stipulation (FP&L Motion, p. 11). FP&L's position on this score is no better than its other arguments. Whatever the merits of FP&L's argument generally, in the context of the Stipulation it is misplaced.

FP&L fails to cite to actual language of the statutory provisions specifying the "duties and powers" of OPC. *See* FP&L Motion at p. 11. The description OPC's "duties and powers" in the very first sentence of Section 350.0611, 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, maintaining positions OPC deems in the public interest, 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 "every . . . FP&L retail customer" (FP&L Motion at p. 11). But the statute does not contain such a statement. Of course, as noted above, other statutory provisions governing the Commission's processes and authority

do speak in terms of "customers."[9] Thus, when the Legislature wanted to identify all who pay Commission-regulated rates to the utility ("customers"),[10] the Legislature readily and repeatedly did so. But the foregoing, comprehensive descriptors of entities taking or paying for service from a utility are *not* used in the section defining OPC's duties and powers.

Moreover, FP&L's position, that OPC spoke for "every . . . FP&L retail customer" or ratepayer (substituting language FP&L would have desired in lieu of the actual statutory language) in this context, would place OPC in challenging ethical terrain. 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

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9 *See e.g.*, §§ 366.06(1), (3).

10 *See* § 366.06(3) (Commission may order refunds to "customers"); *see also* § 366.06(1) (discussing "various classes of customers").

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 these facts, FP&L's contention that OPC represents "every . . . FPL retail customer" (FPL Motion at p. 11), 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.

FP&L's argument is that the OPC represented "every . . . FPL retail customer" (FPL Motion, p. 11), runs contrary to the reality of the proceeding leading up to the Stipulation. 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.

Moreover, perhaps sensing that this argument is obviously deficient, FP&L stretches further, arguing that *someone* signing the Stipulation must have estopped the hospitals[11] here seeking relief. FP&L speculates that the Coalition "may" have represented "some or all of the hospitals" (FP&L Motion, p. 11). 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. The Coalition's petition to intervene (attached hereto as Appendix A) did not purport to act on behalf of acute care hospitals, which are the entities supporting this pleading. However, the Coalition's pleading also, in a confusing passage, describes itself as "an organization of large industrial consumers," an odd choice of words to describe, *inter alia*, motels and nursing homes. Whoever or whatever the Coalition represented, it was not the Hospitals herein.[12] FP&L's effort to make some group, without a comprehensive

[11] FPL Motion, p. 11.

[12] 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.

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 forego rate reduction remedies, 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.

IV.
FP&L'S POSITION IS CONTRARY TO IMPORTANT PUBLIC POLICY CONSIDERATIONS

FP&L now argues that it would be "astoundingly bad policy" for the Commission, in effect, to observe the terms of the Stipulation as written (FP&L Motion at pp. 12-14). FP&L forecasts the demise of incentive ratemaking if relief is granted here (*id.*). These contentions are without merit.

FP&L asserts that under the Stipulation, it was exposed to the "risk of underearning with no prospect for rate relief . . . if expenses rose more than expected" (Motion at p. 13). This assertion ignores FP&L's opportunity to recover fuel costs, and other rate trackers, as well as FP&L's ability to use assets to capture other revenues and FP&L's ability to time the incurrence of expenses in setting a test year for any succeeding rate case.

FP&L attempts to distract attention from its over-earnings by claiming that FP&L has "foregone revenues as a result of the Stipulation totaling in excess of $1 billion" (FP&L Motion at p. 13). This assertion is nonsensical because FP&L could have achieved such revenues only if it had prudent costs justifying that revenue level, which it has not in fact incurred. In other words, the $1 billion figure is a make-believe number, which would not have been sustained had the 1999 proceeding involved a full rate review.

FP&L further implicitly argues that granting the requested relief would "renounce the Stipulation" (FP&L Motion at p. 14). This claim ignores the underlying terms of the Stipulation; as explained above, the Stipulation can be fully implemented consistent with the relief requested herein. The named "parties" to the Stipulation surrendered rights that are enumerated in the Stipulation and that are not here implicated. In any event, FP&L also fails to note that the Stipulation on its face limits a "party to this Stipulation" "from seeking to change the application of any provision thereof" (Article 5, first sentence), and as the Commission has carefully noted, it is not a party to the Stipulation.

FP&L suggests that if its position is not adopted, "parties would never know if their . . . agreement would stand" (FP&L Motion, p. 14). In fact, rejecting FP&L's position here would mean that in the future, FP&L will not attempt to extrapolate beyond the terms of a Stipulation; that consequence promotes the laudable result that "parties" to the stipulation mean what they say and say what they mean, rather than attempt after the fact to change what they had said in the first instance.

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.[13] 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.

V.
FP&L'S CLAIM THAT THE COMPLAINT IS NOT PROCEDURALLY COGNIZABLE IS IN ERROR

FP&L asserts that the Complaint should not be reviewed by the Commission because the pleading (i) does not contain a separate statement of disputed issues of material fact, (ii) does not contain a "clear indication of the ultimate facts alleged," and (iii) does not recognize

[13] 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.

that it seeks to challenge a prior Commission decision, citing Rule 28-106.201, FAC. These assertions are specious.

First, as was explained in the Complaint and the Answer of SFHHA filed August 7, 2001 in Docket No. 001148-EI, the relief sought herein can be granted *without* "reversal or modification of the agency's proposed action," thus Rule 28-106.201(e) is inapplicable. The Complaint clearly describes the relief sought (*see* ¶ 24), which is a reduction in FP&L's excessive and unlawful rates, including both on a prospective and interim basis and also specifies the rules and statutes under which that relief is mandated (*see* Complaint, first textual paragraph and ¶¶ 18, 22 and 24). As to material facts, since most if not all of the facts are drawn from FP&L filings, publications and statements, or from findings by the Commission, there do not at this juncture appear to be disputed issues of material fact unless FP&L repudiates its prior statements (Rule 28-106.201(d)). Because the Hospitals contend in the first instance that relief they seek can be granted without reversal or modification of prior Commission action, Rule 28-106.201(c) is not even pertinent, but, in any event, as an entity interested in the outcome of matters at issue in Docket No.00148-EI, the Hospitals received a copy of the Commission's June 19, 2001 Order by accessing the Commission's website within 48 hours after the Order was made available.

In other words, FP&L's procedural objections are some instances inapplicable and in all other instances pointless since the information was already supplied in the Complaint. However, to alleviate FP&L's concerns, accompanying this filing (should the Commission deem the original Complaint not acceptable) is an amended pleading, pursuant to Rule 28-106.202, FAC. While this amended pleading is wholly unnecessary, given FP&L's

insistence on erecting roadblocks to substantive review of the issues on the merits, it is filed out of a surfeit of caution.

FP&L also interposes an additional procedural objection by simply ignoring pertinent statutory language. FP&L argues that interim rate relief cannot be afforded here (FP&L Motion at pp. 2-4) and quotes Section 366.071, Florida Statutes, to support its claim, unfortunately deleting important statutory language in the process. Section 366.071(1) provides in pertinent part, with the portion deleted by FP&L reproduced in italics, that:

> **366.071. Interim rates; procedure**
>
> (1) The commission may, during any proceeding for a change of rates, *upon its own motion, or upon petition from any party, or by a tariff filing of a public utility*, authorize the collection of interim rates until the effective date of the final order. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. To establish a prima facie entitlement for interim relief, the commission, the petitioning party, or the public utility shall demonstrate that the public utility is earning outside the range of reasonableness on rate of return calculated in accordance with subsection (5).

FP&L's selective quotation ignores the portion of the statute authorizing collection of interim rates upon motion of the Commission or upon a third party's request. In effect, FP&L has deleted statutory language describing the scope of the Commission's authority to order interim rate relief as requested herein. Similarly, FP&L emphasizes the fact that interim rates may be predicated on a test period that differs from the test period used for permanent rate relief (FP&L Motion at p. 3). It is hard to know what point FP&L hopes to establish by referencing a provision which is entirely optional in nature, and thus proves nothing. FP&L further appears to presume that this proceeding cannot provide rate relief during a locked-in period, prior to the effective date of rates established pursuant to the MFR

process. That presumption conflicts with standard utility regulatory practices, in which different proceedings can proceed simultaneously to set a utility's rates for different time periods.

George Humphrey – MFS

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Attorneys for the Hospitals and SFHHA

August 8, 2001

APPENDIX

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for a full revenue requirements case for Florida Power & Light Company	)	Docket No. 990067-EI
	)	Filed: February 3, 1999

THE COALITION'S PETITION TO INTERVENE

The COALITION FOR EQUITABLE RATES ("Coalition") hereby petitions to intervene in Docket No. 990067-EI pursuant to Chapter 366, Florida Statutes and Rules 25-22.039 and 28-106.205, Florida Administrative Code . As support of this Petition the Coalition states:

1. The Coalition is the Petitioner. The Coalition is an association of entities, which pay Florida Power & Light Company ("FPL" or "Company") for power at rates approved by the Florida Public Service Commission ("PSC") and an association of entities, which represent such ratepayers. Representative examples of those entities within the Coalition include the Florida Health Care Association (which consists of most skilled nursing facilities and many assisted living facilities in Florida), Florida Retail Federation (which consists of major retailers in Florida) and the Florida Hotel and Motel Association (which consists of a large number of hotels and motels located in Florida. A substantial portion of the Coalition's members pay FPL for power. The Coalition is a "person" as defined by §101 and §120.52(13), Fla. Stat. The Coalition is authorized to monitor the basis for the rates charged to its members and to challenge such components, as well as the rates themselves in order to assure reasonable and affordable rates for services.

2. The Coalition maintains offices at 2300 N Street, Northwest, Washington, DC 20037, telephone number (202) 663-9097. However, for the purposes of this Petition, The

Coalition may be contacted through its counsel, Ronald C. LaFace, Greenberg Traurig, P.A., 101 East College Avenue, Tallahassee, FL 32301, telephone number (850) 222-6891

3. The agency affected by this Petition is the State of Florida, Public Service Commission ("PSC"), located at 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, telephone number (850) 413-6248. However, this docket concerns a Petition for Full Revenue Requirements case for Florida Power & Light Company. Thus, Florida Power & Light Company ("FPL") is the company most affected by this proceeding and this petition.

4. In this docket, the Office of Public Counsel ("OPC") has petitioned the Commission to conduct a full revenue requirements case for the Florida Power & Light Company (FPL). Among other things, OPC has requested that monies be held subject to refund and that a hearing be held to set fair, just and reasonable base rates and charges for FPL.

5. The Coalition is an organization of large industrial consumers. Members of the Coalition are FPL customers. As consumers of large amounts of electricity, the Coalition members have a substantial interest in this docket.

6. As noted in OPC's Petition, FPL has not had a rate case since 1984. The Commission should examine FPL's rates, charges and return on equity (ROE) in a comprehensive proceeding, like the one OPC seeks.

7. The Coalition's interests will be substantially affected by the action the Commission takes in this docket. If this proceeding results in rate reductions by FPL, a substantial number of the Coalition's members will receive significant reductions in the amounts they pay to FPL for electricity.

8. Disputed issues of fact include, but are not limited, all issues of fact raised in the OPC's Petition to Conduct a Full Revenue Requirements Case for FPL; facts related to whether

FPL's return on equity is excessive; whether accelerated base rate cost recovery plans approved for FPL are unreasonable unjust and unfair; and all facts, assumptions, and criteria used by FPL to set its rates.

9. As a matter of ultimate fact and law, FPL's rates should be set at fair just and reasonable levels and that monies be held subject to refund to the customers of FPL.

WHEREFORE, the Coalition requests that the Commission grant the Coalition's petition to intervene and accord it full party status in this docket that the Commission conduct a full revenue requirements base rate proceeding to establish fair, just and reasonable base rates and charges for FPL.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and fifteen (15) copies of the foregoing has been furnished by Hand Delivery to Public Service Commission Director, Division of Records and Reporting, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850; a copy has been furnished via Hand Delivery to the Office of Public Counsel, Jack Shreve, 812 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400; via U.S. Mail to the parties on the attached mailing list this ____ day of February, 1999.

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I HERBY CERTIFY that a true and correct copy of the foregoing has been furnished by

U.S. Mail to the following parties, this _____ day of August, 2001.

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