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August 29, 2001

By Facsimile Only

Robert V. Elias, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: FPL Rate Case, Docket No. 001148-EI

Dear Mr. Elias:

This is my written objection to one of the "procedures"suggested by Florida Power & Light Company ("FPL") in Matthew Childs' August 15, 2001 letter to you.

One could dance around the ins and outs of FPL's proposed requirement that the staff issue a written recommendation after a mere 30-day examination of the utility's MFRs, but the bottom line is that, stripped of its platitudes to encouraging settlements, the proposal is an unwarranted, unacceptable and thinly-disguised motion for reconsideration of the Commission's decision to order a rate reduction case in the first place. Mr. Childs was pretty straightforward yesterday stating that the staff might, after examining the MFRs, find that there was "no potential or likelihood of overearnings," or words to that effect. Presumably the staff would then recommend that, oops, there is no longer any need to go forward with an "expensive contested hearing." Aside from the unprecedented nature of FPL's request, there are a number of serious problems with granting it.

First, Commission staff will be working on at least two other electric rate cases, amongst other dockets, and can't make the requested examination in a mere 30-days and they said so yesterday. Aside from the timing, it is nothing short of absurd to suggest that a utility's unaudited filing of fully projected test year data could be used, alone, as a basis for analyzing the utility's prospective 2002 earnings. True for any utility, this is especially true for FPL. FPL's last full rate examination was 17 years ago and the less comprehensive 1990 review now enjoys more than a decade of "staleness." A meaningful review of FPL's rates can only be had by a full and complete examination of its rate base, the prudence, reasonableness and necessity of its operating expenses, the level of its revenues and the other factors normally tested in a rate proceeding. Such an examination can only begin with the

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filing of MFRs, not end at that point, which is the goal, or partial goal, of FPL's proposed staff recommendation. The untested MFRs cannot serve as a basis for limiting consideration of any issues in the case, or, indeed, serve as a basis for terminating the rate review, presumably on a MFR review determination that FPL will no longer be overearning in 2002. The need for critical examination of a utility's MFRs is especially important in a case, such as this one, where the test year is fully projected.

FPL presumably hopes for a change in staff's perspective because the projected data in the MFRs "will be different from that reflected in operating results through mid 2001 when the decision for FPL to file MFRs was made." Childs' letter at page 2. One might ask how the projected data in 2002 could be significantly different than the actual mid 2001 data used to justify the rate review without causing its credibility to be even further strained. I would argue that large differences between the 2002 projected data and 2001 actual data will demand more time for a thorough examination, not less. In any event, staff and other parties to this case need an opportunity to review the staff audit report and adequate time to submit and review at least the initial rounds of discovery designed to "flesh out" the worth of the MFRs. There will be more than adequate time for settlement talks after these tasks are accomplished.

On the subject of settlement, there is no objection to settlement being listed as a goal, except to note that it is unnecessary. The parties don't need to be told that proper and timely settlements are to be encouraged nor do they need to have it listed on a time line. As I suggested yesterday, any "schedule" for settlements should run at least to, if not into, the scheduled final hearings.

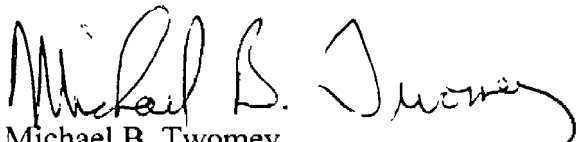
On a more important note, I think it is incumbent upon the staff to clarify the burden of proof in this case and what the expected outcome is to be. I think the burden is on FPL to propose higher, lower or status quo rates and to support those rates with appropriate MFRs, supporting testimony and a cost of service study. That's what Florida Power Corporation did in the Occidental case and that's what FPL should be prepared to do here. Matthew Childs' view of Occidental notwithstanding, I handled most of that case for staff and probably wrote the order in question and don't recall any basis for legally or technically distinguishing between Occidental and the instant case, irrespective of Occidental's petition and presentation of a prima facie case. My view is that the staff made a prima facie case for FPL's overearnings, upon which the Commission acted on its own motion in ordering a case for reductions.

My view, and I think it is probably the view of the staff and most other parties, is that FPL will file for a certain level of retail rates and carry the burden of proof in supporting those rates. Its failure to carry that burden, or even to attempt to, cannot result in the default approval of its current rates. Other parties to the case will have a responsibility for challenging FPL's initial filing with the presumed goal of reducing its required revenue requirement and, thus, the level of its final retail rates. The ultimate rates approved, as in all

rate cases, must be based on the "record evidence" in the docket. FPL has the duty to support all the inputs to the rates it will request. How can it be otherwise?

My clients object to FPL's request that the staff conduct a cursory review of the initial MFRs and file a recommendation with vague purposes as a result therefrom. Further, staff should ensure that there is a clear understanding of the scope of FPL's burden of proof in this case before the passage of time allows any party to claim that they misunderstood the ultimate purpose of this proceeding.

Sincerely,



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Genevieve E. Twomey

cc: All parties by facsimile