

Matthew M. Childs, P.A.

September 24, 2001

- VIA HAND DELIVERY -

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
4075 Esplanade Way, Room 110  
Tallahassee, FL 32399

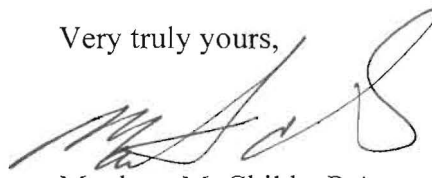
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RE: DOCKET NO. 001148-EI

Dear Ms. Bayó:

Enclosed for filing please find the original and seven (7) copies of Florida Power & Light Company's Response to Publix Supermarket, Inc.'s Petition to Intervene in the above referenced docket.

Very truly yours,



Matthew M. Childs, P.A.

MMC/gc

Enclosures

cc: All Parties of Record (w/enclosures)

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Review of Florida Power & Light )  
Company's proposed merger with Entergy ) DOCKET NO. 001148-EI  
Corporation, the formation of a Florida )  
transmission company ("Florida transco"), ) Filed: September 24, 2001  
and their effect on FPL's retail rates. )  
\_\_\_\_\_ )

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE  
TO PUBLIX SUPERMARKET, INC'S  
PETITION TO INTERVENE**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby responds to the Petition to Intervene (the "Petition") filed by Publix Supermarket, Inc ("Publix"), and states:

1. Publix seeks to intervene in both phases of this proceeding as a retail customer of FPL. At several points in its Petition, Publix describes what it believes should be the factual issues decided herein. Some of the issues identified are, however, contrary to decisions already made by the Commission regarding the scope and focus of this proceeding.

2. In general, FPL has no objection to Publix's intervention. However, it is well established that an intervener takes the case as it finds it. Rule 25-22.039, F.A.C.; *In re: Petition for Approval of Modifications to Tarrif Provisions Governing Transportation of Customer-Owned Gas and Tarrif Provisions to Implement Rule 25-7.0335, F.A.C., by Tampa Electric Company*, Order No. PSC-00-1617-PCO-GU (September 11, 2000). Therefore, Publix may not now seek to redirect this proceeding or recast the issues to be decided, to the extent this is what is sought by its Petition.

3. In Paragraph 4 of its Petition Publix states that "PSC Staff have requested the Commission to review FPL's RTO proposal, earnings, and including the effects of the proposed

merger of Florida Power & Light Company with Entergy Corporation.” Similarly, in Paragraphs 8 and 9, Publix states that one of the issues of material fact to be decided is “the effect of the proposed merger with Entergy Corporation on FPL's earnings and costs. . . .” While the proposed merger was initially a central focus of this proceeding, the merger has been cancelled and the Commission has agreed with FPL that it would be an unwarranted expansion of this proceeding to explore the impact of *not* merging under the guise considering the impact of the merger. Order No. PSC-01-1675-PCO-EI. Publix fails to note that the Commission has held that the now-terminated merger is no longer at issue: “FPL correctly maintains that the effect of the terminated merger is not a disputed fact in this docket and is not a basis for intervention.” *Id.*

4. Moreover, the Commission has recently noted that the issues for Phase I of this proceeding have already been determined and are not subject to change. *See* Order No. PSC-01-1783-PCO-EI. To the extent Publix would seek to introduce new issues into Phase I, it may not do so. It may propose issues for Phase II at an appropriate time, subject, however, to the Commission’s prior determinations as to the proper scope of this proceeding. Thus, even at such time as Phase II issues are developed, there would be no basis to revisit the Commission’s decision that the scope of this proceeding does not include issues related to the terminated merger.

WHEREFORE, FPL respectfully requests that, if Publix is permitted to intervene, the Commission qualify its intervention by noting that Publix takes the case as it presently exists, and is subject to all prior Commission orders regarding the proper scope of the issues to be determined.

Respectfully submitted,

Steel Hector & Davis LLP  
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Tallahassee, Florida 32301

Attorneys for Florida Power & Light Company

By: 

Matthew M. Childs, P.A.

John T. Butler, P.A.

Gabriel E. Nieto

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of FPL's Response to Publix Supermarket, Inc., Petition to Intervene was served by Hand Delivery (\*) or mailed this 24<sup>th</sup> day of September 2001 to the following:

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Florida Industrial Power Users Group  
c/o John McWhirter, Jr.  
McWhirter Reeves  
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Tampa, FL 33601-3350

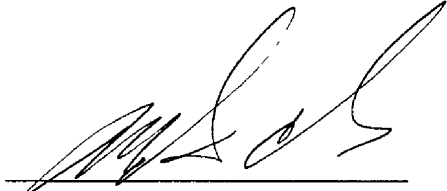
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By: \_\_\_\_\_

  
MATTHEW M. CHILDS, P.A.