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October 30, 2001

**FEDERAL EXPRESS**

Blanca S. Bayó, Director  
Division of Records and Reporting  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0870

Re: Docket No.: 000824-EI  
Publix Super Market Inc., Petition to Intervene in Phase 2 of Docket -13766-01  
Publix Super Market Inc., Notice of Substitution of Counsel -13767-01

Dear Ms. Bayó:

Enclosed please find the original and fifteen (15) copies of Publix Super Markets Inc., Petition to Intervene in Phase 2 of Docket and Notice of Substitution of Counsel in the above-referenced docket. A copy of this filing has also been provided on a 1.44MB floppy disc in Word Perfect 8.

Sincerely,



Thomas A. Cloud

GRAY, HARRIS & ROBINSON, P.A.

TAC:gcj  
Enclosures  
cc: All individuals on docketing service list

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.

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DOCKET NO. 000824-EI

Filed: October 30, 2001

**PUBLIX SUPER MARKETS INC., PETITION TO INTERVENE**  
**IN PHASE 2 OF DOCKET**

**Publix Super Markets, Inc.** ("Publix"), by and through its undersigned counsel hereby submits its Petition to Intervene in the second phase ("Phase 2") of the instant proceeding pursuant to Rules 25-22.039, 28-106.201(2) and 28-106.205, Florida Administrative Code, and as grounds therefore states:

1. The name, address and telephone number of the Petitioner is:  
  
Publix Super Markets, Inc.  
c/o Thomas A. Cloud, Esquire  
Gray, Harris & Robinson, P.A.  
301 East Pine Street, Suite 1400  
Orlando, Florida 32801  
(407) 244-5624 Phone  
(407) 244-5690 Facsimile
2. Copies of all pleadings, notices and orders in this Docket should be provided to:  
  
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Gray, Harris & Robinson, P.A.  
301 East Pine Street, Suite 1400  
P.O. Box 3068  
Orlando, Florida 32801  
(407) 244-5624 Phone  
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3. Procedural Background.

On September 10, 2001, Publix filed a Petition to Intervene in this Docket.

The Florida Public Service Commission (the "Commission") granted Publix's petition to

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intervene in Order No. PSC-01-1959-PHO-EI dated October 1, 2001, but limited such intervention to Phase I of the proceedings on this Docket<sup>1</sup>. This limitation was without prejudice to the rights of Publix to petition to intervene in Phase 2 of the proceedings on this docket.<sup>2</sup> The proceedings on Phase 2 of this Docket are ongoing and issues critical to the substantial interests of Publix are currently being determined. For this reason, Publix now files this petition to intervene in Phase 2 of this Docket.

4. Statement of Substantial Interests.

a. Publix has a substantial interest in the outcome of Phase 2 of this proceeding. Publix maintains corporate offices at 1936 George Jenkins Boulevard in Lakeland, Florida 33815. Publix develops, owns, operates and maintains five hundred and twenty four (524) supermarket facilities throughout the State of Florida. In addition, Publix owns and operates seven distribution centers and two manufacturing facilities to service its supermarkets. The combined retail sales of Publix, as one of the ten largest supermarket chains in the United States (by volume) was fourteen billion six hundred million (\$14,600,000,000) during calendar year 2000. Publix has in excess of one hundred twenty-two thousand (122,000) employees. Publix is one of the largest retail consumers of electricity in Florida and purchases significant amounts of electricity from Florida Power Corporation (the "Utility") and its continued business operations are directly affected by the cost and availability of reliable electric service. In Phase 2 of this proceeding, the

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<sup>1</sup> Order PSC-01-1959-PHO-EI, Subsection XIII(B)(11)(Docket No. 000824-EI).

<sup>2</sup> In Subsection XIII (A)(1) of Order No. PSC-01-1959-PHO-EI, the Commission stated that "For each party whose intervention has been limited to Phase 1 of these dockets, such limitation is without prejudice to each party seeking to intervene in Phase 2 of these dockets."

Commission will consider issues directly affecting the rates Publix will pay in its continued business operations. These will be affected by (i) any cost adjustments made to the current approved Utility tariff rates applicable to the purchase of electricity by Publix and (ii) the formation of the proposed regional transmission organization (“RTO”) currently known as GridFlorida. Publix is in the unique position of owning and operating both commercial and industrial facilities. This combination makes Publix’s interests unique and such interests cannot be adequately represented by any other party. Furthermore, the Commission has granted full party status on other dockets for parties based solely on the fact that such parties are retail electric customers of a utility<sup>3</sup>. Therefore, Publix has a direct and substantial interest in the outcome of this proceeding.

b. Any adjustments to the Utility’s tariff rates for electricity which result from these proceedings will have profound effects on Publix’s access to reliable and competitively priced electricity. Publix is one of the largest retail consumer of electricity in Florida and its continued business operations are directly affected by the cost and availability of reliable and affordable electric service. For these reasons, Publix’s injury is immediate and of the type which is required in order to become party in these proceedings. In re: Application of South Hutchinson Service Company, 87 FPSC 10:298 (1987); Agrico Chemical Co. v. Dept. of Env’tl. Reg., 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied 415 So.2d 1359 (Fla. 1982).

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<sup>3</sup>See Docket 001148-EI, Order No. PSC-01-0628-PCO-EI, Page 3, wherein the Commission granted full party status to Dynegy Midstream Services, Limited Partnership in the Florida Power & Light rate case stating that “Dynegy Midstream is a retail customer of FPL. Thus, its interest in the potential effect of this proceeding on its retail rates is sufficient to give it standing in this proceeding.”

5. Statement of Disputed Issues of Material Fact for Phase 2.

The following are issues of material fact for Phase 2 of this Docket:

- a. Has the Utility exceeding its permitted earnings based on its current tariff rates and practices?
- b. Has the Utility unfairly burdened its retail customers with costs associated with the costs associated with the acquisition of the Utility by Carolina Power & Light?
- c. Should the Utility be required to refund its retail customers for overearnings?
- d. Are any Utility tariff rate adjustments needed based on the outcome of the Commission's examination of the Utility's Minimum Filing Requirements?
- e. Should any or all RTO formation costs incurred by the Utility be passed through to the Utilities retail customers? If so, what recovery methodology should be used?

Publix reserves the right to address other issues as its interests may arise.

6. Ultimate Facts Alleged.

The Commission must do a full review of the Utilities rates and earnings to determine if action is necessary to correct any over-earnings by the Utility. Further, the Commission must determine if the current rate structure and cost allocation by the Utility of all of its transaction costs are fairly distributed among the Utility's retail and wholesale customers. Finally, if over-earnings exist, the Commission should order a refund to the Utility's customers.

7. Applicable Statutes and Rules

Applicable statutes and rules in this proceeding include, but are not limited to:

Chapter 366, Florida Statutes

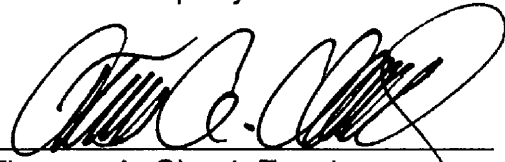
Florida Administrative Code Chapter 25

Florida Administrative Code Rule 28-106.

8. Affected Agency

The affected agency is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

**WHEREFORE**, Publix respectfully requests the Commission enter an Order authorizing it to intervene in Phase 2 of this Docket with full-party status.



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile to the following parties of record and interested parties, this 30<sup>th</sup> day of October, 2001:

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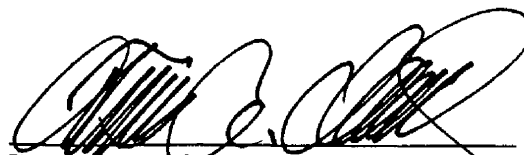
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