

STEEL
HECTOR
& DAVIS

ORIGINAL

Steel Hector & Davis LLP
200 South Biscayne Boulevard
Miami, Florida 33131-2398
305.577.7000
305.577.7001 Fax
www.steelhector.com

Gabriel E. Nieto
305.577.7083
gnieto@steelhector.com

November 26, 2001

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, FL 32399-0850

Re: DOCKET NO. 001148-EI

Dear Ms. Bayó:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Motion to Strike Answer of South Florida Hospital and Healthcare Association to Motion for Reconsideration of Order Establishing Procedure. An electronic copy is provided on a diskette.

Very truly yours,

Gabriel E. Nieto

DISTRIBUTION CENTER
01 NOV 27 AM 9:54

APP GEN/ps
CAF Enclosure
CMP
COM
CTR
ECR
LEG
OPC
PAI
RGO
SEC
SER
OTH

Miami West Palm Beach Tallahassee Naples Key West London Caracas São Paulo Rio de Janeiro Santo Domingo

DOCUMENT NUMBER-DATE

14917 NOV 27 01

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the retail rates of)	Docket No. 001148-EI
Florida Power & Light)	Dated: November 26, 2001
Company.)	
_____)	

MOTION TO STRIKE ANSWER OF SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION TO MOTION FOR RECONSIDERATION OF ORDER ESTABLISHING PROCEDURE

Pursuant to Rules 25-22.060 and 28-106.204, Florida Admin. Code ("FAC"), Florida Power & Light Company ("FPL") hereby moves to strike the "Answer" of the South Florida Hospital and Healthcare Association ("SFHHA") to Office of Public Counsel's ("OPC") Motion for Reconsideration of Order Establishing Procedure and states:

1. The Commission entered its Order Establishing Procedure on October 24, 2001. By the terms of the order, the time limitation for any party to seek reconsideration expired on November 5, 2001. OPC timely moved for reconsideration of that order on November 5, the last day for making such a filing.

2. SFHHA filed its "answer" to OPC's motion on November 14, 2001, within the time limitation for responding to the motion, but long after the time limitation for seeking independent reconsideration of the Commission's Order had passed.

3. The time limitations for seeking reconsideration are binding and nondiscretionary, and to the extent a motion contains a late-filed request for reconsideration it may not be considered. See *City of Hollywood v. Public Employee Relations Commission*, 432 So.2d 79 (Fla. 4th DCA 1983). Although styled an "answer," SFHHA's pleading does not merely support

DOCUMENT NUMBER-DATE

14917 NOV 27 01

or oppose the relief sought by OPC, and instead seeks relief that goes beyond that requested in OPC's Motion for Reconsideration. For example, OPC requested a 60-day interval between the filing deadlines for FPL's initial testimony and intervener testimony. SFHHA argues that this is insufficient and asks for an even longer 75-day interval.

4. While a response to a motion can express support for the relief sought, SFHHA has gone beyond supporting OPC's motion and has attempted to make its own, independent request for reconsideration. Its "answer" is nothing more than an untimely motion for reconsideration under the guise of a response to OPC's motion. As such it is clearly improper. If SFHHA was dissatisfied with the testimony schedule in the Order Establishing Procedure, it could have objected within the designated time period. Having remained silent, SFHHA has waived its right to seek reconsideration:

Failure to timely file a motion for reconsideration constitutes a waiver of the right to seek reconsideration. . . . the time permitted to file a motion for reconsideration is non-discretionary, and the Commission may not consider an untimely motion for reconsideration. . . .

In re Application for Rate Increase in Flagler County by Palm Coast Utility Corp., 1997 WL 199358, Order No. PSC-97-0388-FOF-WS (citations omitted); *see also* Rule 25-22.060(1)(d), FAC ("Failure to file a timely motion for reconsideration, cross motion for reconsideration, or response, shall constitute waiver of the right to do so."). SFHHA cannot now use OPC's motion as a vehicle to request relief independent of that sought by OPC. Its response should therefore be stricken.

5. Finally, FPL notes that the time intervals sought by SFHHA would make it impossible to maintain the current hearing schedule. The proposed schedule in FPL's response to OPC's motion is far more reasonable and strikes a balance between the concerns expressed by

OPC and the realities of the hearing schedule, taking into account the voluminous information that has already been provided by FPL in the form of MFRs.

CONCLUSION

For the foregoing reasons, the Answer of the South Florida Hospital and Healthcare Association to OPC's Motion for Reconsideration should be stricken and given no consideration.

Respectfully submitted this 26th day of November 2001.

R. Wade Litchfield, Esq.
Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: 561-691-7101

Steel Hector & Davis LLP
Attorneys for Florida Power & Light
Company
200 South Biscayne Boulevard
Suite 4000
Miami, Florida 33131-2398
Telephone: 305-577-2939

By: 

Gabriel E. Nieto
Florida Bar No. 147559

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 26th day of November, 2001, to the following:

Robert V. Elias, Esq.
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Florida Industrial Power Users Group
c/o John McWhirter, Jr., Esq.
McWhirter Reeves
400 North Tampa Street, Suite 2450
Tampa, FL 33601-3350

Thomas A. Cloud, Esq.
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801

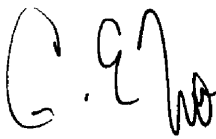
J. Roger Howe, Esq.
Office of Public Counsel
c/o Florida Legislature
111 W. Madison Street
Room No. 812
Tallahassee, Florida 32399-1400

Michael B. Twomey, Esq.
Post Office Box 5256
Tallahassee, FL 32314-5256

Andrews & Kurth Law Firm
Mark Sundback/Kenneth Wiseman
1701 Pennsylvania Ave., NW, Suite 300
Washington, DC 20006

Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman, Esq.
McWhirter Reeves
117 South Gadsden
Tallahassee, Florida 32301

Ronald C. LaFace, Esq.
Seann M. Frazier, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Post Office Drawer 1838
Tallahassee, Florida 32302

By: 

Gabriel E. Nieto