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December 27, 2001

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-VIA HAND DELIVERY-

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

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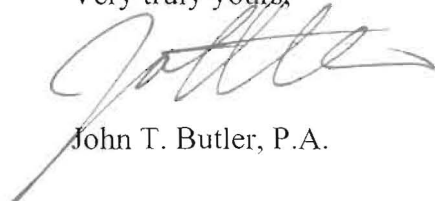
Re: **Docket No. 001148-EI**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company in the above docket are the original and seven copies of Florida Power & Light Company's Response to the South Florida Hospital and Healthcare Association's Motion to Alter Procedures, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 98, and the word processing software in which the document appears is Word 97.

If there are any questions regarding this transmittal, please contact me at 305-577-2939.

Very truly yours,



John T. Butler, P.A.

Enclosure

cc: Counsel for Parties of Record (w/encl.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the retail rates of)
Florida Power & Light)
Company.)
_____) Docket No. 001148-EI
) Dated: December 27, 2001

**FLORIDA POWER & LIGHT COMPANY’S RESPONSE TO THE
SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION’S
MOTION TO ALTER PROCEDURES**

Florida Power & Light Company (“FPL”), pursuant to Rule 28-106.204, F.A.C., hereby responds to the Motion to Alter Procedure of the South Florida Hospital and Healthcare Association (“SFHHA”) which seeks to have the Order Establishing Procedure in this docket, Order No. PSC-01-2111-PCO-EI (the “Procedural Order”) revised to require FPL (a) to produce discovery responses within twenty instead of thirty days after service, and (b) to deliver its direct testimony to all parties by hand delivery or overnight delivery (the “SFHHA Procedural Motion”).¹ The SFHHA Procedural Motion should be denied as untimely. If it is not, FPL opposes proposed revision (a) in the SFHHA Procedural Motion, but does not oppose proposed revision (b). In support of its response, FPL states as follows:

1. On December 11, 2001, FPL and the Office of Public Counsel (“OPC”) filed an agreed motion to change the following dates in the Procedural Order:

| Event | Current Date | Proposed Date |
|---|---------------------|----------------------|
| Utility Direct Testimony (ROE expert only) | January 28, 2002 | January 18, 2002 |
| Utility Direct Testimony (all other subjects) | January 28, 2002 | January 28, 2002 |
| Intervenor Testimony | February 11, 2002 | March 4, 2002 |
| Staff Testimony | February 25, 2002 | March 4, 2002 |

¹ The SFHHA’s motion is part of a pleading entitled “Answer of South Florida Hospital and Healthcare Association to Florida Power & Light Company’s and Office of Public Counsel’s Motion to Revise Schedule Set Forth in Order Establishing Procedure and Motion to Alter Procedures,” dated December 19, 2001.

| | | |
|-----------------------|-------------------|----------------|
| Prehearing Statements | February 28, 2002 | March 14, 2002 |
| Rebuttal Testimony | March 11, 2002 | March 18, 2002 |
| Prehearing Conference | March 14, 2002 | March 20, 2002 |

2. FPL and OPC agreed that these revisions would adequately address scheduling concerns that were raised in OPC's Motion for Reconsideration of the Procedural Order, dated November 5, 2001. OPC was the only party that timely filed a motion for reconsideration of the Procedural Order, although the SFHHA tried to disguise its own untimely motion for reconsideration as an "answer" to OPC's Motion for Reconsideration. FPL moved to strike the SFHHA's "answer" because it improperly sought schedule relief different than that sought by OPC. *See* FPL's Motion to Strike Answer of the SFHHA, dated November 26, 2001, a copy of which is attached hereto as Exhibit 1.

3. The SFHHA is once again trying to bootstrap onto OPC's Motion for Reconsideration, this time by using FPL's and OPC's agreed resolution of their dispute over OPC's scheduling concerns as a pretext for raising the SFHHA's own, separate scheduling concerns. The SFHHA has shown no valid reason for this departure from the procedural rules applicable to this proceeding. The SFHHA Procedural Motion should be denied as an untimely motion for reconsideration of the Procedural Order.

4. If the Commission were nonetheless to consider substantively the SFHHA Procedural Motion, the first of the SFHHA's two proposals must be rejected as burdensome and unreasonable. The SFHHA proposes that FPL be given only twenty days in which to respond to discovery requests instead of the thirty days that are allowed by the Florida Rules of Civil

Procedure and, implicitly, the Procedural Order. *See* Rules 1.340 and 1.350, Fla. R. Civ. P.; Rule 28-106.206, F.A.C.; Procedural Order at 1-2. FPL is presently struggling to respond to literally hundreds of discovery requests from the various parties to this proceeding, at the same time that it is responding to hundreds of audit requests from the Commission's Staff. FPL is hard pressed to prepare, review and serve responses to all of those discovery requests within the allowed thirty days. Twenty days would simply be inadequate.

5. FPL would not be opposed to the SFHHA's second proposal, that FPL's direct testimony be served by hand delivery or overnight delivery as of the dates identified in Paragraph 1 above. In fact, FPL suggests that expedited delivery of testimony may be appropriate for all parties and for all rounds of testimony in this proceeding.

WHEREFORE, FPL moves that the Commission deny the SFHHA Procedural Motion as untimely or, in the alternative, deny the SFHHA's proposal that FPL be required to produce discovery responses within twenty instead of thirty days after service. FPL would not object to the SFHHA's proposal that FPL's direct testimony be served by hand delivery or overnight delivery as of the dates identified in Paragraph 1.

Respectfully submitted,

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By: 

John T. Butler, P.A.
Fla. Bar No. 283479

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (*) or United States Mail this 27th day of December, 2001, to the following:

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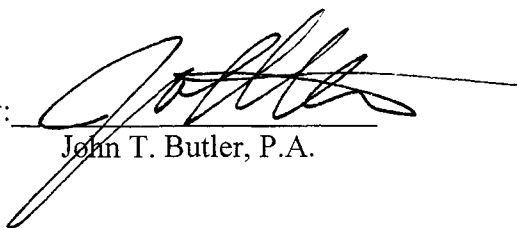
By: 
John T. Butler, P.A.

EXHIBIT 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the retail rates of
Florida Power & Light
Company.

)
)
)
)

Docket No. 001148-EI
Dated: November 26, 2001

**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

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

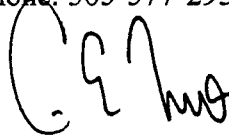
For the foregoing reasons, the Answer of the South Florida Hospital and Healthcare Association to OPC's Motion for Reconsideration should be stricken and given no consideration.

Respectfully submitted this 26th day of November 2001.

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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:

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Tampa, FL 33601-3350

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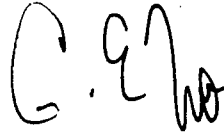
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